# SENATE—*Thursday, August 1, 1991*

*(Legislative day of Monday, July 8, 1991)*

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii.

The PRESIDING OFFICER. Today's prayer will be offered by guest Chaplain Dr. Carlton E. Allen, First Baptist Church, Greenwood, SC.

## PRAYER

The Reverend Carlton E. Allen, First Baptist Church, Greenwood, SC, offered the following prayer:

Let us pray:

O Lord, our God, we have come this morning seeking Thy blessings upon this body and upon our Nation. Grant that those men and women gathered here will be guided by Thy Spirit and touched by Thy grace. Grant that Thy justice will be their standard and ours. May Thy wisdom, O God, so guide our Nation's leaders that all may come to know peace, a sense of unity and the dignity that is Thy will for all people. For these blessings we humbly petition Thee, O God. Amen.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE.

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, August 1, 1991.*

*To the Senate:*

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii, to perform the duties of the Chair.

ROBERT C. BYRD,
*President pro tempore.*

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

## RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1992 AND 1993

The ACTING PRESIDENT pro tempore. The Senate will resume consideration of S. 1507, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1507) to authorize appropriations for fiscal years 1992 and 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes.

The Senate resumed consideration of the bill.

Mr. WARNER addressed the Chair.

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

Mr. WARNER. Mr. President, my understanding is that the Senate will proceed this morning with the authorization bill of the Armed Forces. The amendment of the Senator from Michigan, it is my understanding, will be shortly proposed. Debate will commence.

Mr. President, I hope that Senators, during the course of this morning, reflect on the issue at hand, namely SDI, and that they would have the opportunity to read the lead editorial in today's Washington Post, which, in my judgment is a fair and objective analysis of the central issue before the Senate as it relates to SDI.

The editorial concludes with confirmation of what the chairman and I have been striving to achieve for some time on this issue; namely, that it is a step forward in the mutual interests of the Soviet Union and the United States to take the steps as outlined in our bill.

Mr. President, I ask unanimous consent that the editorial be printed in the RECORD.

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

[From the Washington Post, Aug. 1, 1991]

A NEW PLAN FOR MISSILE DEFENSE

As the threat of a large nuclear war with the Soviet Union has shrunk, so the threat of Third World attack or an accidental or unapproved Soviet firing has become more plausible. This is the logic on which the Senate Armed Services Committee has based its proposal for early deployment of a defense against limited missile attack.

Currently, the United States has no missile defense. Under the new plan, it would deploy 100 non-nuclear interceptor missiles at Grand Forks, N.D., by 1996. They would be futile against a full-scale Soviet attack but not against a light attack—against, that is, what the spread of weapons technology and missiles has made the likeliest threat. The danger was dramatized by Iraq's Scuds and the possibility of effective response by America's Patriots—technologically, a pale version of what would go at Grand Forks.

The committee anticipates extending across the country the degree of protection the Grand Forks missiles would offer the heartland. But since the Anti-Ballistic Missile Treaty of 1972 prohibits missile defense at more than one site, the United States would ask the Soviet Union to join in amending the treaty to permit multiple sites. Further amendment would be needed to deploy the requisite sensors in space.

The committee judges that the Soviets could approve a request for treaty amendment, Moscow has always been more serious about missile defense, having availed itself, as Washington has not, of the ABM Treaty's option of building one site, and feeling perhaps even more exposed to errant attack.

Reflection on the numbers could help convince the Soviets and others that the plan fits snugly the ABM Treaty core purpose of affording each side continued deep faith in the survivability of its retaliatory force. The number of new defensive missiles would be in the low hundreds, against the 8,000 offensive weapons that yesterday's START treaty leaves each side. Those missiles, moreover, would be groundbased—not the space-based sort of President Reagan's initial "Star Wars" vision and of President Bush's favored "Bright Pebbles," which would remain in research and under heavy budget pressure. Deployment cost is put within the $4 billion a year now spent on defense research.

A redesign and first deployment of defensive missiles just as the Cold War winds down? The idea will take some getting used to in the parts of the administration that cling to the more ambitious Bright Pebbles and in the House, a bastion of resistance to missile defense. There must be confidence that the new program meets the right threat efficiently and does not undermine old-fashioned deterrence or play into the hands of Soviet hard-liners. At this point, however, it seems to make sense.

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

Mr. NUNN. Mr. President, Senator WARNER and I believe we made a lot of progress on the first day. We had approximately 13½ hours of debate on this bill yesterday. I thought the debate was constructive, and we have had a total of four rollcall votes, and covered the very important issue of women in combat, as well as two major SDI amendments, and had what I hope has been a very thorough opportunity for people to debate SDI in rather great detail. We are not through with SDI.

It is my hope that we will be able to complete SDI by around noon today and then move on directly to the B–2, which is another, of course, very important subject. We will have three or four amendments on that.

Mr. President, in addition to handling the two issues I have mentioned yesterday—a portion of SDI, and the women in combat issue—we also han-

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

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dled approximately 20 other amendments. We were able to work out a number of those amendments with the authors and reach agreement on both sides of the aisle. With Senator LEVIN taking the leadership last evening, we were able to get those amendments agreed to by unanimous consent.

Mr. President, I will ask the Chair to state the order of business today. I see the Senator from Michigan here on the floor. As usual, he is ready and punctual.

I hope that we can get started on his amendment and move through the agenda for the day. I think we have a good chance of coming close—if we stay here and have a good day and evening—to finishing this bill tonight. That remains to be seen. It depends on how many amendments we have. If people keep filing amendments, no matter how many we handle, you do not make progress. You are simply running on the rug. So I hope our colleagues will restrain themselves. We have other important business to take care of, as the majority leader has announced, before we leave. I think that it is going to be essential that we make as much progress as we can on this bill today.

I thank the Chair.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Michigan [Mr. LEVIN] is recognized to offer an amendment.

Mr. WARNER. Mr. President, if the Senator from Michigan will yield for a moment, I ask unanimous consent that a letter to myself and the Chairman of the Senate Armed Services Committee from the President of the United States be printed in the RECORD in full. Later today, I will address the Senate with respect to portions of this letter, but it encourages the Senate in an unequivocal manner to adopt the positions taken by the committee.

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

THE WHITE HOUSE,
*Washington, July 31, 1991.*

Hon. JOHN WARNER,
*Ranking Member, Committee on Armed Services, U.S. Senate, Washington, DC.*

DEAR SENATOR WARNER: Our nation has worked long and hard toward an improved relationship with the Soviet Union. While the Soviet Union still has a long way to go on the road to reform, we are witnessing positive changes which just a few years ago would have been dismissed as merely dreams.

Wednesday, in Moscow, I will sign an arms control agreement of unparalleled proportions. For the first time in history, the nuclear superpowers will act to reduce, not merely cap, strategic nuclear forces. The Strategic Arms Reduction Treaty (START) will require both superpowers to reduce their inventory of nuclear armed missiles and warheads to levels significantly below those existing today. The practical effect of the treaty is to promote stability by reshaping strategic nuclear forces to be less threatening.

Fulfillment of this goal requires that we also reshape our thinking about strategic defense, and that we deploy those types of strategic forces which will promote stability. The defense budget I have provided to Congress, and which you are now considering, seeks to do precisely this by including the Strategic Defense Initiative and the B–2 Stealth Bomber.

The Gulf War conclusively demonstrated that we need defense against ballistic missiles and that such defense is technically feasible. With over twenty countries projected to have ballistic missile technology by the year 2000, our nation will face a danger wider than that posed by the Soviet missile force. No responsible leader can afford to leave Americans undefended any longer against ballistic missile attacks. The Global Protection Against Limited Strikes, or "GPALS," program which I forwarded to you as the centerpiece of my revised Strategic Defense Initiative, is intended to address this growing danger.

I am encouraged by the Senate Armed Services Committee's support for the Strategic Defense Initiative. Although I would strongly prefer my original request for this program, I recognize that the Committee bill allows for deployment of a defensive system that would protect against limited missile attacks, and provides for development of space-based components. I would hope, however, that as the process moves ahead, we would be able to move even closer to my original request. I would be very concerned if the final bill were to provide less funding or contain more restrictions than the Committee's proposal. Indeed, any final bill must sustain my commitment to defend the United States from limited missile attack or I will veto it.

I am likewise committed to the B–2. The B–2 and START are a perfect match. This revolutionary aircraft is at the center of the modernization of our nuclear deterrent. Other modernization programs such as the Rail Garrison Peacekeeper, Advanced Cruise Missile, and Trident submarine programs have been cut back or terminated because of tight defense budgets. We should remember that even under START, the Soviet Union will have a fully modernized and very capable strategic force. If our nation is to continue to have a credible bomber force, and a credible deterrent, we need the B–2 bomber. There is no substitute for it.

Equally important, the B–2 also is essential to respond to the growing danger posed by regional conflicts—conflicts which can rapidly and unexpectedly assume dangerous international proportions. Our nation must be able to respond immediately and decisively to any such conflict which threatens our security. A long-range, heavy bomber which can survive and operate independent of other military forces and with a minimum dependence on overseas bases is essential. Only the B–2 Stealth offers the combination of survivability, autonomous operation, very long range, tremendous firepower, and employment flexibility. There is no affordable substitute for the conventional capabilities which the B–2 will provide.

Desert Storm proved the value of stealth technology. I urge you to fully support the B–2 bomber. In this case as well, I will veto any final bill that fails to sustain my commitment to the crucial element of our future force structure.

While the world is indeed changing, it is not necessarily safer. Deterrence remains the bedrock of our defense strategy, but we must also respond to evolving military challenges, such as those posed by the proliferation of ballistic missiles and associated nuclear, chemical, and biological warhead technology. Both the B–2 and the Strategic Defense Initiative complement our new defense strategy for a changing world. Both promote stability and security. Both programs need and deserve your strong support.

Sincerely,

GEORGE BUSH.

Mr. WARNER. Mr. President, I rise today to address an issue of great importance and some substantial controversy. The issue is whether Congress can reach a bipartisan consensus on a program to provide our Nation, our military forces overseas, and our friends and allies with a highly effective defense against limited ballistic missile attacks. Since President Reagan announced the strategic defense initiative, or SDI, some 8 years ago, the question of whether the United States can or should provide a defense for the American people against ballistic missiles has been surrounded by largely partisan controversy and debate.

As many of my colleagues know, the Senate Armed Services Committee recently endorsed a compromise program for SDI known as the Missile Defense Act of 1991. For me, this has been a long, but rewarding effort.

Mr. President, I wish to review for my colleagues the history of this effort to forge a bipartisan consensus, and why I think this issue must be addressed today. Nearly 5 months ago, I proposed an amendment to the Desert Storm supplemental authorization bill that would have expressed the sense of the Senate on the need for ballistic missile defenses and called for negotiations to reach an agreement with the Soviet Union to allow each country, without restriction, the right to develop and test all ABM technology. On the first day of debate, I suggested to Senator NUNN that he offer whatever amendment he deemed appropriate to my language so that we could thoroughly debate the issues. We reached this agreement with the understanding that on the following day, we would each withdraw our amendments in order to permit quick passage of that urgent supplemental bill.

In discussing my amendment, I stated that I would move this debate from the Senate Chamber to the village greens of this country. Since then, I have consulted extensively with my constituents and other Americans on their views of whether this country should be defended against ballistic missiles. These discussions were most enlightening. One interesting observation is that most Americans with whom I talked are under the impression that the United States already has in place a system to defend our citizens against ballistic missile attacks. This misconception concerned me, and I wondered whether other Americans shared this belief.

Mr. President, as a result of this concern, I asked my staff to research opin-

ion polls to determine if a survey had been conducted on whether the American people believe that they are already defended from missile attack. Only one poll was identified. The poll, which was conducted in 1987 by the polling firm of Penn & Schoen, was very revealing. When presented with the statement, "The United States currently has a system to defend against nuclear missile attack," and asked if it was true or false, 64 percent of the Americans surveyed thought it was true, only 31 percent said it was false.

Mr. President, this commonsense belief of the American people should be instructive to my colleagues. How can we continue to deny the American people what they expected us to have provided already—a practical solution to the threat of ballistic missile attack? Indeed, we, as Members of this distinguished body, are entrusted by the American people to uphold the Constitution of the United States. This venerable document clearly states in its preamble that "We the People of the United States, in Order to form a more perfect Union * * * provide for the common defense. * * *" Common defense, Mr. President, is what we must ensure for the American people. Common defense does not mean offensive arms only, but also the inclusion of nonthreatening, purely defensive arms in our military forces. The means to defend against missile attacks on our Nation is one such capability. Why should the American public expect anything less?

In May of this year, I was joined by Senators BILL COHEN and DICK LUGAR in the drafting of a white paper, entitled "The Future of Ballistic Missile Defenses and the ABM Treaty: A Basis for Consensus," which describes our views of how a bipartisan consensus on missile defenses might be attained. The Missile Defense Act of 1991 remains faithful to the principles, if not the letter, of the white paper. Mr. President, I request unanimous consent that the white paper be printed in the RECORD following this statement.

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

(See exhibit 1.)

Mr. WARNER. Mr. President, after the white paper was released on June 12 of this year, and leading up to the committee markup of the fiscal year 1992 defense authorization bill, I worked closely with Senators COHEN, NUNN, THURMOND, EXON, and SHELBY, to draft legislation to implement the goals set out in the white paper. In particular, we attempted to find a common ground which could be supported by a majority of our Republican and Democratic colleagues. I believe the Missile Defense Act of 1991 represents that bipartisan consensus which I sought in the white paper, as evidenced by the 16 to 4 vote of the committee to adopt the Missile Defense Act.

Mr. President, let me take a moment to thank the distinguished chairman of the committee for his cooperation, insight, and invaluable support for this provision. The historic debate that spanned nearly 4 days in committee on this provision was profound, reasoned, and comprehensive. For those who either voted for or voted against the amendment, this debate was a credit to the committee, its chairman, its members, and the Senate as a whole.

Let me now address what the committee has accomplished through its action on the SDI Program. In drafting the Missile Defense Act, I felt it was critical that a program incorporate an arms control strategy. Our legislation establishes a goal that puts the United States on a path that will ultimately provide for a multiple-site defense of the United States against limited missile strikes. This is achieved by first deploying a current treaty-compliant ABM system as the initial step of a multiple-site system and urging the President to begin negotiating amendments to the ABM Treaty for increased deployment sites and interceptors and greater utilization of space-based elements, such as sensors, than is currently permitted under the terms of the ABM Treaty. Our amendment provides $45 million in fiscal year 1992 to begin site preparations for initial deployment of the treaty compliant system.

To develop effective technologies achieving the goal outlined above and to provide future options for protecting the security of the United States and our allies and friends, robust funding for promising ABM missile technologies, such as Brilliant Pebbles, is required. As discussed in the white paper, deployment of Brilliant Pebbles is not included in the initial plan for the multiple-site defense system architecture described above. Nonetheless, it is considered an important technology option that must be developed aggressively.

Mr. President, I feel it is critical that, as deployment of the initial antiballistic missile site draws near to the deployment date of fiscal year 1996, the President and Congress must assess the progress in the negotiations to amend the ABM Treaty. Our amendment therefore requires periodic assessments of the negotiations, and clearly states that if U.S. negotiating objectives are not achieved, the President and Congress should consider our options under the ABM Treaty, which include possible withdrawal as described in article 15 of the treaty.

Mr. President, I know some of my colleagues are opposed to the Missile Defense Act. I respect their views, but disagree with the characterization by some critics of this provision.

Some assert, for example, that the Missile Defense Act will destabilize the current strategic nuclear balance, and even fuel a new arms race. I completely disagree with this assertion. This provision only directs what is currently allowed under the ABM Treaty. But it does urge negotiations with the Soviet Union to allow for, among other things, additional sites so that all 50 States could be defended. Moreover, recent statements by various Soviet officials indicate an interest in such negotiations, based on concerns over ballistic missile proliferation and even concern over the control of Soviet nuclear weapons due to unrest and civil strife in the Soviet Union.

In a discussion of nuclear weapons security, General Yuri Maksimov, Soviet Deputy Defense Minister and commander in chief of the strategic rocket forces, acknowledged that:

> * * * Another factor is the unsanctioned operation or use of nuclear weapons. Again, the only thing preventing this is the single centralized system.

Shortly after his resignation from the Soviet Central Government last December, former Soviet Foreign Minister Eduard Shevardnadze verbalized similar concerns when he said:

> It's impossible to preserve the Soviet Union peacefully at the moment. I'm afraid of violence if power should be applied in this respect. Our country just cannot collapse peacefully and disintegrate peacefully. This will be connected with a civil war and application of nuclear weapons. And only God knows where these missiles fly—To Kiev, Riga or Washington, DC."

These are very unsettling indications of the serious concerns of the Soviet leadership about the possibility of accidental or unauthorized launches of their own intercontinental ballistic missiles. And they have expressed concerns similar to the concerns of many Senators regarding the proliferation of ballistic missiles to other countries. Soviet Defense Minister Marshal Yazov devoted several paragraphs of a recent paper on Soviet military issues to what he termed "the appearance of a threat to our [Soviet] security" posed by regional conflicts and missile proliferation. Soviet Major General Belous, senior scientific associate, Committee of Soviet Scientists in Defense of Peace and Against the Nuclear Threat, commented recently in the Soviet military journal, Sovetskaya Rossiya, on this emerging threat:

> Nor must we disregard the fact that many countries are standing on the threshold of mastery of nuclear and missile technology. In these conditions is it possible to guarantee that some totalitarian or adventurist regimes will not attempt to make use of nuclear missile weapons to achieve their amibitious aspirations? * * * In these conditions the Soviet Union and the United States will possibly have to jointly seek ways to defend their territories from probable nuclear missile attack by third countries.

In a separate article in the Soviet press, General Belous and Lt. Gen. M.

Vinogradov, a member of the U.S.S.R. Academy of Sciences, went on to say in Sovetskaya Rossiya:

Mindful of these realities, we should hardly deny the possibility of reasonable compromises in the future and the development of defenses for the U.S. and U.S.S.R. territory against accidental missile launches or blackmail attempts and threats made by third countries.

On the question of the destabilizing effect of the Missile Defense Act, I cite the comments of Sergei Blagovolin, of the Soviet Institute of World Economy and International Relations, who wrote last November:

I do not think that an SDI system designed exclusively to guard against the threat of nuclear blackmail by other [non-Superpower] regimes would have even the slightest negative effect on the superpower strategic balance. In fact, if it is a joint effort it will actually strengthen confidence.

Mr. President, I request unanimous consent that the recent study by Dr. Keith Payne of the highly regarded National Institute for Public Policy, from which these recent Soviet statements regarding ballistic missile defense are taken, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. WARNER. Mr. President, another misconception concerning the Missile Defense Act is that it approves the deployment of a multiple-site defense system. This is a stated goal of the act, but the act in no way "approves" a multiple-site deployment. This objective is to be achieved through negotiations, not by unilateral action. What is approved, or directed to be pursued by the Secretary of Defense, is an ABM Treaty-compliant missile defense system as an initial step, similar to that which the Soviet have already deployed around Moscow. Indeed, the Soviet Union is the only country in the world that has an ABM defense system. Why should the American people be denied similar protection? How can this be considered destabilizing if the Soviet Union already has one? And why should Congress not face up to this issue and state its views as to what the goal of the United States should be respect to missile defenses? Should not the American people know where we in the Congress stand on this vital national security issue? I believe we owe it to the American people, Mr. President.

Mr. President, this controversy and debate has many perspectives and directions. The Bush administration's SDI proposal this year reduced substantially the original missile defense architecture from the "phase I" program which was designed to counter a massive Soviet strategic ballistic missile attack, to the GPALS program designed to counter limited strikes against the United States, our military forces overseas, and other countries around the world. At the other end of the spectrum, the House fiscal year 1992 DOD authorization bill eliminates all funding for Brilliant Pebbles and space-based sensors and reduces substantially the funding for ground-based interceptors, an action which clearly prevents the development of any serious strategic ballistic missile defense program, even an ABM Treaty-complaint version.

Over the past few months, a few of my distinguished colleagues have stated their views on missile defenses, and I applaud their willingness to express their positions for the record. Some have suggested that they might support an ABM Treaty-complaint system only, deferring any debate over multiple-site deployment for the future. Such a system of only 100 fixed ground-based interceptors at one site would provide little, if any, protection against limited strikes for our coastlines and would leave unprotected Alaska and Hawaii. Others have suggested that we focus on the ABM Treaty and suggest in a vague way that we consider possible amendments to the ABM Treaty to allow for additional deployment sites and interceptors. But none have provided specific direction as to how such a program should be structured, as we have done in the Missile Defense Act. And finally, some have suggested that the United States abrogate the ABM Treaty and immediately proceed to develop and deploy a system designed to protect against all types of ballistic missile attack.

Mr. President, my purpose in outlining these wide-ranging views is to point out the glaring need for a consensus position on this vital issued before our country. What we have done in the committee is provide a comprehensive plan—not a vague suggestion of intent—for a program that is the basis for a bipartisan consensus. We have a responsibility to provide an alternative missile defense plan, not just vague, unconstructive rhetoric or criticism. As a long-time supporter of theater missile defenses and effective missile defenses for the United States, I am concerned that this internecine debate, if it continues without resolution, will deny the American people the right to be defended from missile attacks.

What has brought this issue to the fore, Mr. President, is the Iraqi use of ballistic missiles during the Persian Gulf war. This glaring demonstration of missile defense technology and the specter of ballistic missile attacks has dramatically changed the terms of this debate. The American people, indeed the entire world, witnessed the Patriot system intercept Iraqi Scud missiles—a terrorist weapon targeted primarily at the populations of Israel and Saudi Arabia. I believe this single example should be the necessary impetus to forge a bipartisan consensus on ballistic missile defenses.

Mr. President, some of my colleagues have asked: What is it that we must now defend our country from? Over the past 2 years, I have heard many of my colleagues assert that recent changes in Eastern Europe and the Soviet Union obviate the requirement for defenses against missile attacks. Operation Desert Storm has changed many of their views on this subject, at least with respect to providing our forces overseas with a sufficient capability to defend against missile attacks.

I have stated many times, on the Senate floor, in the press, and in public, that I welcome and applaud the historic changes in the Soviet Union. We must continue to do whatever we can to encourage the further democratization of the Soviet Union. I have also cautioned, however, that many of the important promises made to the world by Soviet leaders have not yet translated into concrete and irreversible change. Mr. President, in this context, we cannot forget the significant and formidable nuclear ballistic missile capability of the Soviet Union. As the Chairman of the Joint Chiefs of Staff, Gen. Colin Powell, stated in recent testimony before the Senate Armed Services Committee: "* * * the Soviet Union remains the one country in the world with the means to destroy the United States in a single devastating attack." The committee has also received recent testimony from the intelligence community. Their testimony is unequivocal:

Although a START agreement would reduce the overall number of Soviet strategic weapons from about 11,000 to some 7,000, this smaller force will become more balanced, reliable and survivable and will possess more accurate weapons. For example, by the late 1990's about 80 percent of Soviet strategic forces will be mobile, presenting an extremely difficult targeting problem for the United States. These modernized forces will enable the Soviets to maintain a formidable strategic nuclear warfighting posture. START will have only a minor impact on Soviet capabilities to hold key North American and Eurasian targets at risk.

Soviet strategic defenses continue to be upgraded, despite budget reductions. The Moscow ABM system is nearing full operational capability, and strategic SAM's and fighter interceptors are being upgraded. The Soviets are continuing work on deep underground facilities for leadership protection and command continuity.

The massive offensive missile capabilities of an unstable Soviet Union do not, however, represent the sole or perhaps even the worst likely threat. The rapid proliferation in the Third World of ballistic missiles and weapons of mass destruction makes it imperative that an effective missile defense system be created as soon as possible.

The Director of Central Intelligence estimates that, by the end of the century, between 15 and 20 developing countries will possess ballistic missile capabilities; at least 6 developing countries probably will have ballistic mis-

siles with ranges up to 1,800 miles; and at least 3 of these countries may develop missiles with ranges up to 3,300 miles that could directly threaten the United States. Many of these countries are currently developing, or will soon have the ability to develop, nuclear, chemical, or biological weapons for possible delivery on ballistic missiles.

To this end, one of the most important lessons of Operation Desert Storm is that we cannot rely upon the ability to locate and destroy missiles before they are launched, and a threat of retaliation may not deter missile attacks. In short, defenses against such attacks are necessary to save both civilian and military lives, as well as to maintain a full range of military and diplomatic options. As trustees of the Constitution, we would be derelict if we do not reach a consensus on this issue and obtain for the American people the protection we are sworn to provide.

Mr. President, we are at an important crossroads in history. We have the opportunity to shape a new world order in which the world's great military powers turn to defensive, rather than offensive capabilities. As we begin to make the transition, I believe the Missile Defense Act of 1991 represents a bipartisan consensus on deployment of defenses to protect America against limited ballistic missile attacks. The safety and security of the American people, as well as the effectiveness of our deterrent, demand that we initiate this program. Our constitutional responsibility to provide for the common defense of our Nation requires it.

I urge my colleagues to support the Missile Defense Act.

EXHIBIT 1

THE FUTURE OF BALLISTIC MISSILE DEFENSES AND THE ABM TREATY: A BASIS FOR CONSENSUS

(By Senator JOHN WARNER and Senator WILLIAM S. COHEN)

INTRODUCTION

Operation Desert Storm provided the United States with a number of lessons that have profound implications for military affairs and national security planning for years to come. One of the most important lessons of Operation Desert Storm is that we cannot rely upon the ability to locate and destroy missiles before they are launched and that a threat of retaliation may not deter missile attack. Defenses against such attacks are necessary to save lives as well as to prevent disruption of military operations. Some type of ballistic missile defense is needed now. We, the authors of this paper, believe there is a potential for bipartisan consensus in Congress to forge a program that will provide the United States and its forces overseas, as well as our allies and friends, with a capability to defend against ballistic missile attacks.

This paper presents a comprehensive plan which is the absolute minimum capability acceptable to the authors but a plan which, we believe, can be supported on a bipartisan basis. The plan provides for a two-part strategy: (1) negotiations to achieve a new agreement or amend the Anti-Ballistic Missile (ABM) Treaty of 1972 to allow for the deployment of defenses capable of protecting the citizens of the United States against limited ballistic missile strikes, and to permit development and testing of ABM technologies, including those covered by the Treaty and those not foreseen or defined at the time of the Treaty, and (2) a programmatic guideline that includes numbers of launchers and deployment sites, and sensors needed to fulfill the minimum requirements for a limited but effective defense system, as well as endorsement of deployment of theater missile defense (TMD) capabilities to protect U.S. forward-deployed forces and allies.

For the purposes of forging a bipartisan consensus in favor of strategic defenses, a decision on inclusion of space-based interceptors in an initial limited missile defense architecture can be deferred for the time being. For many, deferring the inclusion of space-based interceptors as part of the initial deployment of limited defenses is a difficult decision. Many believe that space-based interceptors provide the highest degree of effectiveness and, in the long run, may represent the most cost-effective means of defending the United States. Others question the feasibility of space-based interceptors. But in the interest of providing the nation as soon as possible with at least some protection against ballistic missiles, and since our proposal would provide for an unfettered testing program for space-based interceptors to determine their effectiveness, we have decided to set aside this issue temporarily. What is achievable now is a limited defense system, a highly effective protection against accidental, unauthorized, or deliberate ballistic missile attacks of limited scope.

BACKGROUND

While the Iraqi use of conventionally armed SCUD missiles against Israel and Saudi Arabia posed no major military threat to coalition forces, or in the case of Israel, to its national survival, the missiles did threaten the lives of our troops and neighboring civilian populations and were enormously significant as a political terrorist weapon. Armed with lethal chemical or nuclear warheads, as may be the case in the future, these missiles could have caused devastating loss of civilian and military life, as well as severely disrupted military operations. There is little doubt, however, that the Patriot TMD system provided a degree of defense sufficient to permit Israel to forego retaliation against Iraq, which in turn contributed to sustaining the solidarity of the multinational coalition of forces in the Persian Gulf conflict.

In the future, ballistic missiles from a variety of sources, combined with weapons of mass destruction, will pose an increasing threat to U.S. and allied forces overseas, and to the United States itself. These systems will have not only substantial political impact, but, most assuredly, military significance as well. The Director of Central Intelligence estimates that, by the end of the century, between fifteen and twenty developing countries will possess ballistic missile capabilities; at least six developing countries probably will have ballistic missiles with ranges up to 1,800 miles; and at least three of these countries may develop missiles with ranges up to 3,300 miles that could directly threaten the United States. Many of these countries are currently developing, or will soon have the ability to develop, nuclear, chemical, or biological weapons for possible delivery on ballistic missiles.

At the same time, we must not ignore the fact that the Soviet Union has presented, and, in its present unstable condition, will continue to present, the greatest ballistic missile threat to the United States. As the Chairman of the Joint Chiefs of Staff, General Colin Powell, stated in recent testimony before Congress: ". . . the Soviet Union remains the one country in the world with the means to destroy the United States in a single devastating attack." The Soviet ballistic missile threat to our land-based and in-port deterrent forces is more formidable today than in the mid-1980s, and the U.S. has not completed efforts which were started during the 1980s to reduce the vulnerability of these forces. In this regard, we should consider how a limited defense deployment would also complement a START agreement, by hedging or safeguarding against both technological surprise and unexpected changes in the threat to which a reduced force would be more vulnerable than a larger one. Defense of our deterrent forces against attack is an option that should be rapidly developed.

Given the combination of emerging Third World ballistic missile threats and the continuing challenge of the fully modernized and highly lethal Soviet strategic nuclear force (the danger of which might even be heightened by internal Soviet instability and unrest), we believe the question for the United States is not whether we should deploy effective theater and strategic missile defenses, but rather, how many, of what type, and how soon? The safety and security of the American people, as well as the effectiveness of our deterrent, demand correct answers.

PHASE I TO GPALS

In 1983, President Reagan announced the Strategic Defense Initiative (SDI). SDI was structured as a comprehensive research effort to determine if ABM technology could be developed to protect the United States from a deliberate Soviet ballistic missile attack. A Phase I architecture was first outlined in 1987, consisting of ground- and space-based interceptors to defend both populations and deterrent forces against a large-scale Soviet ballistic missile attack.

When President Bush assumed office in 1989, he initiated a national security strategy review of ABM technologies and deloyment options. In his State of the Union address of January 29, 1991, the President directed that "the SDI program be refocused on providing protection from limited ballistic missile strikes, whatever their source." The President shifted the near-term priority for the SDI program away from a strategic deterrence and defense approach to the more modest objective of protection against limited strikes. The restructured program, called Global Protection Against Limited Strikes (GPALS), is essentially the same set of systems and architecture as Phase I, except the number of ground-based interceptors is reduced by 50 percent and the number of space-based interceptors (Brilliant Pebbles) is reduced by 75 percent.

In recent testimony before Congress, General Colin Powell reiterated, however, that given the robust and fully modernized Soviet strategic nuclear threat, the original Phase I mission requirement remains valid. He indicated his support for the GPALS program and characterized it as an important and discrete step toward fulfilling the greater Phase I requirement.

The scaled-down GPALS program has shifted the terms of the SDI debate from deterrence and defense to a question of what type of defenses are necessary to provide protection against limited ballistic missile attack. This has, in turn, brought to the fore the issue of space-based interceptors.

Under the threat scenario against which Phase I was designed, there is no question that space-based interceptors are necessary to counter a massive missile attack. It is widely acknowledged that space-based defensive systems offer the best prospects of a high rate of ballistic missile intercepts over the aggressor's territory rather than the defender's, as well as significantly lower operations and support cost than ground-based systems. In addition, for purposes of providing an assured and effective global defensive capability, space-based interceptors are potentially the most capable component of such a defense. All of the factors hold true even for the GPALS architecture. In short, while we may decide to forego the deployment of space-based interceptors for political reasons, opponents of space-based interceptors must acknowledge their significant contribution to meeting the challenge of effectively countering ballistic missiles.

Skeptics of space-based interceptors, such as Brilliant Pebbles, argue that the technical data are not sufficient to know whether such a system is feasible or could be countered by the Soviets. The SDI program has made substantial progress in proving the technical feasibility of ballistic missile defenses and in assessing cost-effective and realistic countermeasures. We would note that, while testing data are currently limited on space-based interceptor technologies, review of the Brilliant Pebbles program by the Defense Science Board and JASONs identified a couple of technical challenges but no technical show-stoppers. Moreover, in large part, the development, testing, and demonstration of such high-leverage, space-based technology are restricted by Congressionally mandated limitations, and possibly restricted by the ABM Treaty.

Until both Congressional and possible Treaty restrictions on developing and testing ABM technologies are removed, it will be more difficult, costly, and time-consuming to prove fully the effectiveness of Brilliant Pebbles or other space-based interceptor technology in defending against missile attacks. Because of these restrictions, testing of Brilliant Pebbles technology is often designed around legal interpretation rather than engineering principles. In some cases, two or three tests may be required to carry out experiments when one test could accomplish the same objective more effectively. More importantly, we would be forced to make decisions to build a certain system on analysis of the test data, not on end-to-end testing as we do with normal military programs, again, because of Congressional and possible Treaty restrictions.

While opponents often raise questions about the technical feasibility of a certain missile defense component, in the end the central issue is a political one, having to do with our relations with the Soviet Union, questions of deterrence and the role of military systems in space, and the prospects for arms control. This debate, however informed, seems to us to skirt the real issue: should we provide our citizens and our forces overseas with some defense against ballistic missile attack? We believe the answer to this question is clearly in the affirmative. For this reason, we have outlined below a program that, we believe, forms the basis for a consensus on ballistic missile defenses.

A BASIS FOR CONSENSUS

In light of all of the above considerations, we believe that our obligations under the ABM Treaty, as interpreted by Congress, should be modified. We believe the initial objectives set forth herein are reasonable and, given recent statements by certain Soviet officials, could form the basis for successful negotiations.

These negotiations must be aggressive and time-limited. Otherwise, missile defense research cannot be pursued with fiscal efficiency or in a manner that will provide the nation with a timely defense capability against limited strikes. For this reason, a period of not more than two years should be established to negotiate satisfactory changes to the Treaty. If we do not achieve these negotiating objectives within that period, then we feel the Administration, in consultation with the Senate, must consider the options available to the country, including possible withdrawal from the ABM Treaty.

A key aspect of our suggested negotiating objectives is the right to increase the number of deployment sites and interceptors currently allowed under the ABM Treaty. Some proponents of limited defense systems suggest that we should limit deployment to 100 interceptors at one site (currently declared by the United States to be Grand Forks, North Dakota). Technical data and physics strongly indicate that such a Treaty-compliant deployment would not provide an effective capability to defend our citizens against the majority of limited strike scenarios. Such a system would only protect a small sector of the United States, leaving Americans on our coastlines and in Alaska and Hawaii totally vulnerable. Therefore, we believe it is critical that any negotiations result in higher ceilings for interceptors and multiple-site deployments.

While some elements of our overall proposal have been mentioned in a general way by others, what we have sought to do is to describe as specifically as possible a program that contains the minimum essential elements that we believe are required to provide an effective, limited defense system. But what we propose is only feasible if the two interrelated components—arms control objectives and programmatic content—are pursued in tandem. Pursued together, we believe they provide the basis upon which a bipartisan consensus and successful negotiations with the Soviets are possible. The details of the two components of the plan are outlined below:

ARMS CONTROL COMPONENT

Negotiate a new agreement or amend the ABM Treaty within two years or less to allow for: increased number of interceptor launchers and deployment sites, development and testing of all ABM technology, deployment of space-based sensors for direct battle management, and relaxation of restrictions on exporting ABM technology to our allies and friends to counter advanced, long-range ballistic missiles currently under development by third countries.

Clarify and further define U.S. rights for: space-based weapons and development and deployment of TMD systems.

PROGRAMMATIC COMPONENT

Accelerated TMD program for our forward-deployed forces, as well as for our friends and allies, such as Israel.

Limited defense system consisting of: 5–7 deployment sites to protect the United States, including Alaska and Hawaii, 700–1200 fixed ground-based launchers, and space-based sensors for TMD and ABM battle management.

Development and testing of ABM technology to demonstrate space-based interceptor and other technologies for future deployment.

Defer debate for now over deployment of space-based interceptors.

CONCLUSION

Finally, if a consensus can be achieved, we also believe it is imperative that Congress fully fund the SDI program and rebuff attempts to restructure the program in ways that would deny the Administration the appropriate flexibility necessary to achieve the programmatic objectives outlined above. In this regard, it is important to ensure that follow-on technology efforts (including the development of Brilliant Pebbles technology) not be underfunded or eliminated. While we are willing to forego at this time the issue of space-based interceptor deployment as part of an initial limited defense architecture, we do not believe that it is in the national interest to preclude this technology option for the future. Again, we believe space-based systems provide the best hope for an effective means of countering ballistic missiles for the future. Our nation must not be denied the right to determine if this is true.

We support, therefore, the requirement set forth and restated recently by the Chairman of the JCS, General Colin Powell, for a Phase I-like defense as a long-term goal, adapted or restructured to fit future geopolitical conditions. Until then, we believe we have identified a basis for a consensus which, if pursued aggressively, will culminate in a system that provides a minimum capability to defend against limited ballistic missile strikes.

PROGRAMMATIC COMPARISON

| Programs | GPALS | Consensus program |
|---|---|---|
| Theater missile defense | Yes | Yes. |
| Ground-based interceptors (multiple sites) | Yes | Yes. |
| Space-based sensors | Yes | Yes. |
| Brilliant Pebbles space-based interceptors (development and testing). | Yes | Yes. |
| Brilliant Pebbles space-based interceptors (deployment). | Yes | Defer decision. |

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SOVIET STATEMENTS SYMPATHETIC TO MUTUAL BMD DEPLOYMENT

(By Keith B. Payne with the assistance of Willis Stanley)

The U.S. position at the DST has been to establish the basis for a "cooperative transition" toward a more defensive approach to deterrence—including the mutual deployment of BMD. The Soviet DST position has remained in opposition to such a defensive transition. Recent statements by some Soviet Foreign Ministry and military officials, however, indicate that some support is developing within the Soviet Union for the mutual deployment of BMD, possibly as a part of "defensive deterrence."

The persistence of the SDI and the proliferation of ballistic missile technology appear to be motives for the apparent Soviet interest in mutual BMD deployment. Concern about the threat posed by ballistic missile proliferation is surfacing in the Soviet Union. For example, in Sovetskaya Rossiya, Candidate of Technical Sciences Maj. Gen. Belous writes that despite misgivings about U.S. intentions and the potential for "a genuine system of international security" involving space-based defensive systems:

"Some of the arguments put forward by SDI's champions also require careful consideration. The world today is bipolar, they argue, but in the near future it will become multipolar. This will also affect the military sphere. Whereas today there are eight states on the 'nuclear threshold,' capable of crossing it and beginning production of mass-destruction weapons, by the end of the 20th century there will probably be 20 such states.

They will also possess missile technology. All this will considerably increase the risk of both deliberate and accidental nuclear conflict.[1]

Chief of the Main Staff of the Soviet Strategic Rocket Forces (SRF), Col. Gen. Kochemasov stated recently, "Say nuclear missile weapons fall into the hands of irresponsible, incompetent people. What then? Any use of such weapons could provoke World War III. That is a terrible danger."[2] And, in a paper entitled, "USSR Ministry of Defense Draft: Military Reform Concept," Minister of Defense Marshal Yazov devotes several paragraphs to, "the appearance of a threat to our security" posed by regional conflicts and proliferation.[3]

This concern about ballistic missile proliferation has led some in the Soviet Union to identify mutual BMD deployment as a possible response, As Belous stated:

"In order to deal with this threat, SDI's apologists argue that it is necessary at the least to develop a 'thin' ABM defense capable of successfully dealing with small numbers of incoming missiles. One of the plans for this kind of defense proposes siting 1,000 ground-based interceptor-missiles in six areas of the United States. Mindful of current realities, we should hardly deny the possibility of reasonable compromises in the future and the development of defenses for the U.S. and USSR territory against accidental missile launches or blackmail attempts and threats made by third countries.[4]

In an August 1990 article in Sovetskaya Rossiya, coauthored by Belous and Lt. Gen. Vinogradov, the point is repeated that joint U.S.-Soviet BMD efforts may be an appropriate response to the threat posed by ballistic missile proliferation, with a caveat against space-basing:

"Nor must we disregard the fact that many countries are standing on the threshold of mastery of nuclear and missile technology. In these conditions is it possible to guarantee that some totalitarian or adventurist regimes will not attempt to make use of nuclear missile weapons to achieve their ambitious aspirations?

"In these conditions the Soviet Union and the United States will possibly have to jointly seek ways to defend their territories from probable nuclear missile attack by third countries. However, one provision that remains fundamental is the nonsiting in space of strike weapons, which could seriously destabilize the international situations."[5]

In another recent article, Sergei Blagovolin, of the Institute of World Economy and International Relations, also writes positively about BMD limited to protecting against Third Party threats:

"I do not think that an SDI system designed exclusively to guard against the threat of nuclear blackmail by other [non-Superpower] regimes would have even the slightest negative effect on the superpower strategic balance. In fact, if it is a joint effort it will actually strengthen confidence.6"

Perhaps most dramatic of the recent Soviet statements supportive of BMD is that by Viktor Alksnis. Alksnis is the Chairman of Soyuz, an important conservative faction within the Congress of Peoples' Deputies. In an article, appearing in Literaturnaya Rossiya, Alksnis' speech during a session of the Supreme Soviet is quoted verbatim. The following is a quote from Alksnis' speech; it is particularly interesting given Alksnis' position:

"I would like to touch on the issue of the U.S. Strategic Defense Initiative. I am increasingly leaning toward the point of view of the Americans, who, according to the information available to me, are primarily designing this system as a defense against an accidental nuclear attack. I believe that a nuclear war between the USSR and the United States is indeed impossible. However, who can rule out such a possibility, given the proliferation of nuclear weapons and means of mass destruction throughout the world? Iraq already has a nuclear bomb. It looks like Israel has also created one, as well as the Republic of South Africa. Brazil has now suspended development; however, all of such work is under way. Will we not need to create our own SDI in order to rule out the possibility of a strike against Soviet territory by, for example (I would not like to predict this) Iraq if the situation aggravated?

"We are saying that we will create an asymmetrical version of our own SDI, that is, to defend against American missiles. However, we absolutely disregard the probability of a possible strike by some nuclear terrorist, a blackmailer who may capture some installation with nuclear weapons and threaten the Soviet Union. Who is thinking about this? Why does the ministry of Foreign Affairs not think about this?"[7]

In a recent interview Col. Gen. Volter Makarovich Kraskovskiy, whose responsibilities include the Moscow Galosh BMD site, identified protection against instability in countries armed with ballistic missiles and chemical warheads as a mission for the Galosh system, in addition to protection against accidental or unauthorized attack.[8]

There appears to be some support in the Soviet Union, including within the Soviet military, for an expanded BMD role. This is confirmed by Col. Gen. (Res.) Yu A. Gorkov, who notes in the May 1990 issue of Voyennaya Mysl (Military Thought) that in the Soviet press, "Some authors declaim for creating a strong air and missile-space defense so that Leningrad, Kiev, Tiblisi, Sverdlovsk, Novosibirsk, and other cities do not become hostages."[9]

The apparent "rethinking" of mutual BMD deployment also is apparent in some articles written by members of the Ministry of Foreign Affairs (MFA). Writing in an MFA journal, a Second Secretary of the International Organizations Department, Ednan Agayev, argues for a position very similar to the U.S. notion of cooperative transition.

"But its [nuclear deterrence] character which at present epitomizes offensive—that is, objectively an aggressive—philosophy, should change. It was finally formulated and legalized in 1972, when the ABM Treaty was signed. Under the Treaty the USSR and the USA gave up the development of defensive strategic systems in favour of offensive arms. The logic of their choice was quite understandable. * * * But, as it was once pointed out by René Descartes, who was a strict logician, in order to get to the truth it is necessary to call everything in question. And hasn't the present "offensive deterrence" been long ripe for that? The only modern deterrence is defensive. And its prerequisites, even if they are only intellecutual, already exist.[10]

Mikhail Aleksandrov, Identified as an MFA Senior Expert in the Assessment and Planning Department, has written that:

"It is time we became realistic and gave up the hope that SDI-related work will be discontinued. It appears that if the trend towards the development of defence technologies is correctly oriented, it may, far from leading to destablization, result in a better model of strategic stability than the one we have.

"The model of defence domination will make it possible to switch over, in deed, and not in word, to a defensive military doctrine at all levels of confrontation.

"There is no doubt the transition to the new model of strategic stability will inolve a certain political risk. * * * It seems, therefore, that the only way to the new strategic structure is that of gradual mutually agreed and coordinated steps, which might include phased deployment of ABM components. * * *[11]

Members of the technical/academic community also have expressed sympathy for mutual BMD. Professor V. Etkin, Chief of Applied Space Physics at the Institute of Space Research has advocated a cooperative path toward defenses, including space-based BMD:

"A similar [cooperative] decision is also possible in the sphere of space-based ABM defense positions, whose capabilities in a global conflict are being questioned in both the USSR and the United States. But what if the conflict is not global? What if we are talking about guarantees against accidental launches or, above all, missile launches by extremist groups? Such a limited system including ground- and space-based positions for combating non-massed missile launches is within the bounds of feasible technical solutions."[12]

Members of the Soviet Institutes have made specific statements about the relationship between START II and BMD deployment. For example, in February 1990, Andrei Kortunov, of the Institute of the United States in Canada, wrote in Moscow News, that "a compromise over anti-ballistic missile (ABM) systems" could be a part of

[1] "The SDI Syndrome. Seven Years Since the United States Announced the "Strategic Defense Initiative." Sovetskaya Rossiya, 23 March 1990, p.5. Reproduced in FBIS-SOV-90-058, p. 2.

[2] Quoted in Pravda, February 21, 1990, p. 6. Soviet Foreign Minister Shevardnadze has called for a bilateral U.S.-Soviet agreement to control the export of ballistic missile technology to the Middle East. See "Spread of Missiles Seen as Soviet Worry in Mideast," New York Times, March 24, 1989, p. A2. In addition, the Soviet Union has reacted strongly to Israel's testing of the Jericho II intermediate-range ballistic missile. In a 1987 Hebrew language broadcast, for example, Radio Moscow warned Israel that by developing the missile it was becoming "part of the nuclear confrontation between the superpowers" and that the missile "is threatening our economic centers, command and control centers, and petroleum fields like Baku."

[3] Dr. Yazov, "USSR Ministry of Defense Draft: Military Reform Concept," Pravitelstvenny Vestnik, No. 48 (November 1990), pp. 5-10; translated in, FBIs-SOV-90-239, December 12, 1990, p. 63.

[4] "The SDI Syndrome. Seven Years Since the United States Announced the 'Strategic Defense Initiative,'" Sovetskaya Rossiya, 23 March 1990, p. 5. Reproduced in FBIS-SOV-90-058, p. 3.

[5] "What the Generals Think About Disarmament: The Strategic Offensive Arms Treaty and Our Security," Sovetskaya Rossiya, August 23, 1990, p. 3; in, FBIS-SOV-90-165, August 24, 1990, p. 1.

[6] Sergei Blagovolin, "The Gulf crisis and arms control A Soviet View," International Defense Review, No. 11, 1990, p. 1233.

[7] Quoted in Literaturnaya Rossiya, November 12, 1990, in FBIS-SOV-90-230, November 29, 1990. pp. 43.

[8] "Just What is ABM," TRUD, May 26, 1990, p. 1.

[9] Reprinted in, JPRS-UMT-90-005-L, June 20, 1990, p. 34.

[10] "K novoi modeli strategicheskoi stabil'nosti [Toward A New Model of Strategic Stability]," Mezhdunarodnaia zhizn', No. 2, 1989, pp. 107-111.

[11] "Defence Domination Versus Nuclear Containment," Soviet Military Review, (December 1989), pp. 50-51.

[12] "From Secrecy to Trust," Pravda, 20 July 1989, p. 5.

START II.[13] Writing in New Times, a Soviet publication for Western audiences, Andrei Kortunov and Sergei Fedorenko suggest that, given certain preconditions, START II could include "possible joint reconsideration or abolition [sic] of the 1974 protocol annexed to the 1972 ABM Treaty."[14] This, of course, would permit two BMD sites with 100 interceptors at each site.

While the above statements concerning mutual BMD certainly cannot be said to constitute a shift in the Soviet position on mutual defenses and the ABM Treaty, they do constitute evidence that there exists some official and unofficial interest in the possibility of agreed BMD deployment beyond that permitted by the ABM Treaty. That interest may ultimately lead to a change in the Soviet position of DST and an agreement to change the status of the ABM Treaty.

AMENDMENT NO. 979

(Purpose: To set forth policy regarding the continued adherence of the United States to the ABM Treaty)

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

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself, Mr. BIDEN, and Mr. CHAFEE, proposes an amendment numbered 979.

On page 4, between lines 3 and 4, insert the following new subsection:

(i) INTERPRETATION.—Nothing in this Act may be construed to imply congressional authorization for development, testing, or deployment of anti-ballistic-missile systems in violation of the ABM Treaty, including any protocols or amendments thereto.

Mr. LEVIN. Mr. President, ordinarily, on some of these amendments we ask unanimous consent that further reading be dispensed with, but this amendment is so short and so much to the point, I thought it was important that it be read. There is not much that can be added to this language, other than the background for the language itself. It is clear, straightforward, and it makes a very important point for those of us who believe that the Anti-Ballistic-Missile Treaty has helped to secure this country, has helped to avoid an arms race in space, has allowed us, finally, to get some reductions in the number of nuclear weapons, has provided for stability in a nuclear world, and made a major contribution to the security of the American people.

Last night, we had an extensive debate on the committee's SDI plan. An effort to change that plan was defeated. There were about 40 Senators who are deeply troubled by the implications in the plan of the Armed Services Committee.

The core of the matter is this, and this is the core of the problem that has been created by the committee language: In this language—it still stands after last night's effort to amend it and it failed—the Senate is adopting a plan to deploy systems that are prohibited by the treaty.

That is a significant step in the eyes of many of us, a very dangerous step and an unnecessary step because it is possible to seek negotiation of a treaty to allow for systems without adopting the plan first. You can adopt a goal to modify a treaty to permit systems to be deployed but that is not the goal stated here. This goal, this plan is to deploy systems that are prohibited by your treaty, no ifs, no ands, no buts, adopt the plan to deploy now, threaten the treaty now, and negotiate later, the battle cry that is incorporated in this language of the Armed Service.

Mr. NUNN. Mr. President, will the Senator yield on my time?

Mr. LEVIN. I am happy to yield.

Mr. NUNN. The Senator said "adopt a plan to deploy now." Would the Senator change that to "adopt a plan now to deploy"?

Mr. LEVIN. I think it was very clear in context. I am happy on the Senator's time to say "adopt now a plan to deploy."

Mr. NUNN. "Later."

Mr. LEVIN. The deployment obviously has to say come later but the adoption of the plan is now and the negotiations come later. It is a threatened treaty now by adopting a plan-now-to-deploy-later approach which is so objectionable to so many.

Mr. NUNN. If the Senator will yield on my time again, I think it is very important for people to understand that we are setting forth an architecture or plan and we are giving the directive to "develop for deployment." The plan is a serious plan, no doubt about that. But what we are not doing is authorizing any deployment now with this bill nor are we authorizing anything that would violate the ABM Treaty in this bill.

It is not the intent to do anything in this bill that would violate the ABM Treaty. It is not a violation of the ABM Treaty to plan or have an architecture. There is nothing in the ABM Treaty that even mentions the word "plan" or "architecture." What we are talking about now, and also talking about as a part of the plan, is a negotiating track that would hopefully lead both superpowers to come up with the same type plan for a limited defense. That is a very important distinction.

I thank the Senator.

Mr. LEVIN. Mr. President, there was an opportunity in committee to make exactly that distinction which was rejected by the committee. There was an amendment which I offered in committee which provided, in effect—and this was the clear purpose of it—that we would seek to negotiate changes in the treaty to allow for the deployment of systems and that that would be the goal. And the goal could have been stated that way. But that was defeated.

The committee instead decided to adopt now a plan to deploy systems which would be in violation of the ABM Treaty, and then the hope was expresed in a later part of the language that negotiations could succeed to permit that deployment, that there was no linkage.

The plan was adopted without qualification, the goal was as adopted no ifs, no ands, no buts, the threat to the treaty is embodied now and the hope was later expressed that we would talk about it and negotiations could succeed.

We throw down the gauntlet now, although that implication could have been avoided by adoption of an amendment which would have made clear that the goal was to negotiate a change in the treaty to allow for the deployment of these systems. That was rejected and instead it was clearly stated and we are now adopting this plan. That is the part which is so objectionable to so many of us.

This ABM Treaty is a contract. Mr. President, when the U.S.S.R. broke this contract by building a radar at Krasnoyarsk we objected strenuously, rightfully, and righteously, as we should have. This ABM Treaty is not only a contract, it is a treaty which has allowed us to avoid an arms race in space.

Just to give you a few quotes from important people over the decades who have protected this treaty. Former CIA Director Colby said that the only way to defend our country against nuclear attack is to prevent it from happening, that the ABM Treaty has played a major role in providing the conditions necessary for progress on limiting offensive forces. It has done more to reduce the threat of nuclear war than any other single agreement.

West German Former Minister Genscher called the ABM Treaty the Magna Carta of arms control. Six former Secretaries of Defense: Harold Brown, Clark Clifford, Melvin Laird, Robert McNamara, Elliott Richardson, and James Schlesinger have reaffirmed their view that the ABM Treaty makes an important contribution to American security and to reducing the risk of nuclear war, and urged American and Soviet leaders to stop further erosion of this treaty.

The ABM Treaty has made it possible for us to enter into a START agreement just yesterday, and they are linked. The Soviets have made it clear that they are linked, as we have in the past. They have entered into the negotiating record of the START agreement a formal statement which reads: "That the treaty"—now they are referring to the START Treaty—"may be effective and viable only under conditions of compliance with the treaty between the U.S.S.R. and the U.S.A. on limitations of anti-ballistic-missile systems, signed on May 26, 1972."

So this treaty has protected our people by avoiding an arms race in space,

[13] Quoted in FBIS-SOV-90-037, February 23, 1990, p. 2.

[14] "After the Treaty: What's in Store?" New Times, 17 April 1990, p. 11.

by allowing us to finally reduce the number of weapons which we must face. It has made possible stability between two superpowers so that neither party has the fear of being hit and not having the capability to retaliate. If the retaliatory force is threatened by defensive systems, either party might be tempted to fire first, before their own forces have been knocked out, and either party again will be less willing to reduce the numbers of offensive weapons that they have.

Secretary Weinberger was asked the question: What would we do, what would we do if we were faced by defenses, what would our response be if we were facing in the Soviet Union a capability to hit our retaliatory strike?

His answer was that "even a probable Soviet territorial defense"—mind you not even an actual one, just a probable one "would require us to increase the number of offense forces and their ability to penetrate Soviet defenses to assure that our operational plan could be executed."

And that is exactly what the Soviets are saying they will do. We heard some soothing words last night from the chairman and they are important words. And again this morning the chairman has indicated that what is in this language is just a goal and that there is no authorization here to deploy these systems and that the ABM Treaty is intact.

Well, this amendment will clarify that intent. And for those of us who see in the committee language a threat to the ABM Treaty which will cause the Soviets to rethink their agreement to make cuts, as they said they would at the time they signed the START agreement, for those of us who see in this threat to the ABM Treaty a threat to unravel arms control and to undermine American security, this amendment will provide a little reassuring solace because what it simply does is to state the intent which I believe the chairman here has said is his intent.

It contains the assurance that the chairman, I believe, has indicated as to what is not intended in this language. And that is why this amendment is stated so simply. And I will close and reserve the remainder of my time after reading this language because it states and reaffirms that:

> Nothing in this act may be construed to imply Congressional authorization for development, testing or deployment of anti-ballistic missile systems in violation of the ABM Treaty, including any protocols or amendments thereto.

Mr. President, I yield the floor, and reserve the remainder of my time.

Mr. WARNER. Mr. President, I yield myself such time as I might require.

Mr. President, the good Senator from Michigan and I came to the Senate together and we have now served some 13 years on the Armed Services Committee. All of us on that committee know there is no one that excels this Senator from Michigan in terms of his careful study and homework. In the past week or so we had two meetings at 8 o'clock in the morning on the B–2 bomber, another issue which concerns the Senator. He has been right there in the front row and asking some of the most difficult and incisive questions. Therefore, I have the greatest respect for his views.

But I would like to on this particular one enter into a colloquy on several points. Let us not lose sight of the fact that the ABM Treaty in 1972 was in an entirely different world than faces us today. I have recounted, along with other Senators, the growing threat from the Third World to our Nation.

It is questionable how soon some may get the intercontinental version of the ballistic missiles, but I think the Senator from Michigan would certainly concede that in certain theaters of operations beyond our shores, our forward deployed troops are at risk from ballistic missiles. We certainly witnessed it in the Persian Gulf with the Scud missile. And some 20 nations are going to have these weapons in the future.

The architecture of the amendment adopted by the committee, an amendment that the chairman and I and others worked on, is designed to protect our interests against the limited or accidental attack. It is not intended to threaten the Soviet Union or the stability because of its limited nature. It is designed to protect the continental United States in the beginning such protection as may be afforded by a single site. It also carefully lays down a course of negotiation of the ABM Treaty.

Nothing in this amendment is intended to threaten the Soviet Union that we are going to withdraw from the treaty. To the contrary, we are going to sit down in a conscientious way and negotiate. And as you look at the geographic dispersal of the some 20 nations that are going to possess ballistic capabilities in the near future, indeed, the Soviet Union, its territory and its interests are in many respects nearer to those of those missions than are the United States and its likely areas of deployment of its forces.

So this Senator believes there is a certain mutuality of interest that at least should be explored by the United States and the Soviet Union in a round of talks that I hope will begin, assuming the Senate accepts this committee suggestion, that is the amendment.

Could the Senator then answer, how do we, at the same time preserving the integrity of the ABM and seeking amendments through negotiations, how do we protect ourselves from this growing threat to our forward deployed units worldwide? How do we prevent the loss of life, not only to our forces but indeed to the people of Israel, which we witnessed in the Persian Gulf, how do we prevent the type of contingent situation in the future?

Mr. LEVIN. I thank my friend. Indeed, we did come here together. I hope this colloquy is on his time because we are so limited in the amount of time we apportioned out.

Mr. WARNER. I think we will just allocate the time: I will accept the time of propounding the question, you accept the time in responding.

Mr. LEVIN. I cannot do that because I would be cutting into time of a colleague.

Mr. WARNER. Well, then, I will yield 1½ minutes of my time, because I think it is an important issue.

Mr. LEVIN. It is a very important question.

As my good friend knows, there was unanimity in the committee in supporting the tactical missile defense. Indeed, we added money to what the administration asked us for tactical missile defense and defense against short-range missiles so when you talk about how do we protect our forces abroad, the answer is by improved tactical missile defense. Defense against the short-range missiles are totally in compliance with the Anti-Ballistic Missile Treaty. Those systems are treaty compliance. All of us favored that. We all voted to add money to the administration request.

What this language addresses is something beyond that, and that is the ABM Treaty noncompliant systems for the long-range missiles. And you asked a vital question.

You say, should we sit down with the Soviet Union and explore a mutuality of interest in defending against those missiles? And my answer to your question is, we should. We should sit down with them and negotiate, but we should not threaten the treaty now which provides for the deployment of missiles which would violate a treaty now and then say we will talk about it later. That is not the way to deal with somebody with whom you have a contract. If you want to change that contract, you sit down and say, we would like to make these changes.

Mr. WARNER. Mr. President, in reply to that statement I would simply say the following: At some point today, I will address the various architectures of the forward deployed tactical missile defense. But, in essence, if we contain that type of architecture to the narrow interpretation of the ABM Treaty as of today, we are going to have to carry tremendous amounts of equipment that we would not have to carry or develop if we were just to utilize certain elements in space like sensors to reduce the necessity for many, many oversized radars.

So it is an entirely different type of architect that we could have employed with tactical missile defenses in for-

ward deployed areas if we sit down and renegotiate conscientiously a common understanding of the ABM Treaty. And as we all know, weight and space are severe limitations in forward deployed forces.

So I think it is important that the Gore amendment yesterday clearly said nothing but ground base for your tactical forward deployed systems.

Well, if you take that theory, then you are talking about a great many components, oversized radars, and much equipment to be carried, and, indeed, I would argue that equipment, even though it could possibly be designed, would cover only a very limited area of protection for forward deployed forces. But I hope this morning the proponents of the Levin amendment and others would address the internal problems in the Soviet Union today as they relate to a possible accidental firing.

In my opening statement yesterday, I read a quotation from the former Foreign Minister Shevardnadze in which he said there is instability and you could have accidents. And should we not in this country begin to protect our people against the possibility of an accidental firing as this political and nationalistic upheaval takes place in the Soviet Union?

Those are the central questions which can be addressed by the proponents of the Levin amendment.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who seeks recognition? Who yields time?

Mr. CHAFEE. How much time does the proponent of the amendment have left?

The ACTING PRESIDENT pro tempore. The Senator from Delaware was promised 30 minutes last night and there are 30 minutes yet.

Mr. CHAFEE. May I have 4 minutes?

Mr. LEVIN. I yield 4 minutes.

Mr. CHAFEE. I have a question to the distinguished chairman of the Armed Services Committee, whom I notice is on the floor, and the question is as follows. I have listened carefully both to him and the distinguished ranking member. Everybody in this Chamber knows the affection and regard I have for both of those distinguished Senators.

My question is: Why does my colleague not accept the amendment? Both of my colleagues have said they may be on a course that could lead to a change in the ABM Treaty, but that is not the purpose of my colleague's efforts here.

I think it is also fair to recognize that among his legions of supporters on this floor there are those who cheerfully would break that treaty, and we recognize that. But I do not include the distinguished chairman of the committee in that group.

So I cannot understand why he, as manager, does not accept the amendment.

Mr. NUNN. The Senator poses, from my point of view, a good question. The Senator from Michigan and I have been struggling over the words of his amendment for about 3 weeks now. He is a very diligent member of our committee. I do not know of anyone more careful than he is. He proposed an amendment in committee, and when I first heard about the amendment he was proposing on the floor it was my impression that it was the same amendment. It is not the same amendment because the amendment he proposed in committee—which I opposed and would have to oppose here—was an amendment that basically would have forced the goal, the architecture, to be ABM Treaty-compliant.

It is my view that that amendment went far too far because it meant we could have no plans. It meant Congress could never have a plan that basically went 1 inch beyond the ABM Treaty, yet the administration has run around for 9 years and had plans that would grossly violate the ABM Treaty. But once the committee goes 1 inch over the line with the plan, we could not.

The Senator asked me the question, what about this amendment? I am studying this amendment very carefully right now and I am studying it in concert with my colleague from Virginia. This amendment is different from the committee amendment proposed by the Senator from Michigan because this amendment does not talk about plan. The amendment talks about the authority, the authorization.

It is my view, as the Senator said, there is nothing in this amendment and nothing in our comittee bill that does authorize any violation of the ABM Treaty. So I am studying the amendment carefully and I will have a better response for the Senator later.

Mr. CHAFEE. By later, does the Senator mean before we get into a vote on this amendment?

Mr. NUNN. Before we vote, yes. I have not made a statement yet. I have not made my statement yet. I have not said I oppose the amendment at this stage.

Mr. CHAFEE. Mr. President, I hope very much the managers would accept the amendment. As one Senator, I greatly admire the ABM Treaty. But let me say I find nothing sacrosanct about that treaty, that if it could be changed in the best interests of the United States, it ought to be changed. There is nothing written in concrete or stone about the ABM Treaty. But it should not be abrogated, willy-nilly, on the Senate floor by going full speed ahead in a contrary direction without realizing we are going in that direction.

What this amendment says to me, anyway, is: Look, if in the future we want to change the ABM Treaty, all right, but let us do it with forethought and planning and in concert with the administration and not by some vote by the Congress of the United States that sends us charging down this path.

Mr. NUNN. If I could interject on this point, if the Senator will yield, on my time, I agree with that sentiment completely. Everything we have done in this bill is trying to preserve the philosophy of the ABM Treaty. Everything we are authorizing in this bill is in compliance with the ABM Treaty. We have a plan and a goal in here that could be interpreted as going beyond the ABM Treaty, depending on the number of sites and what we do with sensors. But that is a plan. It is an architecture. It is not an authorization. It is not in any way a violation of the ABM Treaty.

The ABM Treaty does not preclude planning, and to have any kind of meaningful negotiation or meaningful concept that makes sense for protecting this country, this Nation—and I include the whole Nation—against limited attack, then we have to have a plan.

So I agree with the Senator completely on what he said thus far.

Mr. CHAFEE. I must say, I thought the distinguished chairman of the committee in his last statement just agreed with what this amendment says. So I certainly hope he would give it very careful and prayerful consideration because I would like to see it adopted and not go to a vote.

If I could say one other thing, these treaties that were ratified are very valuable treaties. The ranking member of the committee did a superb job when he was Under Secretary of the Navy, negotiating a treaty with the Soviet Union on incidents at sea. That treaty is still in effect today and has served this Nation well. If we want to change it in the future, we ought to be able to change it. But I hope we would not charge down some path here saying Congress is going to change it without working with the authorities, the Department of the Navy, and the administration. That is all we are saying here: "Nothing shall be construed as implying congressional authorization for violation of the ABM Treaty."

I hope this amendment will be adopted.

The ACTING PRESIDENT pro tempore. Who yields time? Who yields to the Senator from Delaware?

Mr. BIDEN. Mr. President, parliamentary inquiry. Does the unanimous-consent request give the Senator from Delaware 30 minutes on this amendment?

The ACTING PRESIDENT pro tempore. It does not.

Mr. LEVIN. I yield to the Senator from Delaware 30 minutes, or such portion thereof that he may need.

The ACTING PRESIDENT pro tempore. The Senator from Michigan yields 30 minutes.

Mr. LEVIN. It was the intention, of my 45 minutes, that 30 minutes be allocated to our friend from Delaware. He now controls it.

Mr. BIDEN. Before the Senator from Rhode Island leaves the floor, if I could have his attention, I will use 1 minute off of my 30 minutes right now.

Our distinguished managers of the bill keep saying this is only architecture, only architecture.

To paraphrase Gerard Smith, our original negotiator, he makes an analogy. He says that the architecture that is being proposed here would be like us coming to the floor of the U.S. Senate in the twenties, during prohibition, and setting out in a piece of legislation the following: "It is the intention of the United States Congress that we allow the people of America to purchase liquor."

We are not violating the amendment to the Constitution prohibiting people from drinking liquor, but the architecture we are proposing is that people be able to drink liquor.

This is not mild architecture, like that which would be required with regard to ATBM. The analogy in that case would be to come to the floor and say: "Under certain circumstances, in a situation where the medical profession concludes that liquor is particularly needed to ease the pain for someone with a particular disease, we propose that we be able to amend the amendment at a later date to allow that to happen."

That does not go to the heart of the amendment to the Constitution that says we cannot drink liquor.

What our good friends are proposing, what my friend from Rhode Island is asking here is, in fact, what is this about? Is there anything inconsistent?

This is fundamentally inconsistent with the ABM Treaty, as inconsistent as coming to the floor in the twenties and saying the architecture we are proposing is to allow every bar in America to once again sell beer and liquor, notwithstanding the fact that that does not violate the amendment to the Constitution prohibiting that, because we are not telling them to do that yet. We are just saying in advance, that is that we hope to accomplish.

It seems to me that is quite an exercise in sophistry. We are standing on the floor of the U.S. Senate. We voted against the Gore amendment, which I supported and which would have dealt with this issue, and we are saying, "By the way, we love the ABM Treaty. We know it is not sacrosanct. We should be able to amend it." Amendment to the treaty implies that the essence and philosophy of the treaty will be kept intact, and it will mildly change how it is, in fact, implemented.

We come forward, with the Senate about to vote on a piece of legislation that contains within it a specific goal, that goal being a U.S. deployment of an antiballistic-missile system, including one or more adequate additional antiballistic-missile sites and space-based sensors capable of providing a highly effective defense for the United States.

That is inconsistent with the philosophy of the ABM Treaty, as inconsistent as if we said 50 years ago, when there was an amendment prohibiting the drinking of liquor in the United States: "It is the goal of the United States to allow every bar in America to sell in whatever quantities they wish liquor and beer to whomever is over the age of 21." It does not violate the amendment.

This does not violate the ABM Treaty, but it says: We are now proposing as a goal, laying a foundation, the record that we are in the U.S. Senate for the attainment of an objective which, if and when reached, would fundamentally be at odds with the philosophy of the ABM Treaty, which we say we want to keep.

My friend from Virginia keeps asking a very important question. He says, "What about protecting those troops out there?" And that is ATBM. We all have these elaborate phrases we use, but that is a fundamentally different issue. That is the type of thing we saw with the Scud missiles.

My colleague, Senator WARNER, says, and rightly so, we may need sensors up there, which are violations of the ABM Treaty. We may need sensors to allow an improved Patriot missile system in order to protect people. I acknowledge that. That is what the amendent procedure in the ABM Treaty is about.

If we are going to amend it on the margins, so that it does not go to the heart of the rationale for the ABM system, any amendment along those lines would not address the essence of the ABM regime in the first place. I will cease now for the moment, and just say that what the committee has proposed and what we are about to vote on goes to the very heart and essence and rationale for the existence of an ABM Treaty.

So I close at this moment by saying, to paraphrase Gerard Smith, that setting a goal like the one set—not like the one set in this legislation—is to the ABM Treaty what the Senate, when we had prohibition, would be doing if on the record it said, "Our goal is to allow Americans to, once again, drink liquor, as they did before there was a prohibition amendment."

It does not violate the constitutional amendment, but it says we are going on record as saying that we will renegotiate that constitutional amendment, when in reality you cannot renegotiate that constitutional amendment and have any of the rationale for the amendment remaining after you have met your goal. If you meet the goal here, you are essentially going against the fundamental rationale for the ABM system in the first place. That being to ensure that both sides remained in a position whereby their homeland was vulnerable; that is the whole rationale.

I think we should be more honest about this. I think the people who support this should say, "Hey, look, we do not think the rationale for ABM makes sense anymore, and what we want to do is get rid of ABM," instead of saying, "Hey, we like the rationale of ABM; we really think it is important, but we want to get rid of it."

For the moment, I yield the floor.

Mr. GORE. Will the Senator yield 2 minutes?

Mr. BIDEN. I will be delighted to yield 2 minutes to my friend off my 30 minutes.

Mr. GORE. Mr. President, I want to make a couple brief points about this amendment. This amendment expresses what the sponsors of the committee language say is their intent. Why can they not accept an amendment that says the Congress is not authorizing a system that violates the ABM Treaty? I will give you the answer, Mr. President. It is because half the supporters of the committee language want to violate the ABM Treaty and support the committee language precisely because it sets in motion a plan which will inevitably violate the ABM Treaty.

If I were to speculate on what the sponsors of the committee language are doing right now, I would speculate that they are huddled in consultations with the supporters of the committee language, for whom this language is an anathema, trying to get them to mute their opposition and let the managers of the bill accept the language.

But the Senator from Wyoming [Mr. WALLOP] for example, is strongly opposed to language like this. He fought it in committee. His allies fought it in committee, and the committee could not muster a majority so long as the language of the Senator from Michigan, saying we are not going to violate the ABM Treaty, was attached to the committee bill.

So now it comes to the floor and the half of the supporters of the committee bill who do not want to violate the ABM Treaty are forced to consult with the other half who do want to violate the ABM Treaty and ask them, please, do not jump off the reservation, if we have to accept this language that says we are not violating the ABM Treaty.

It will be very interesting to see how the consultations come out. Will the fragile coalition assembled around two radically different designs for defensive systems hold together in the face of this humble proposal from the Senator from Michigan to simply put the Senate on record as saying we want to do what the sponsors of the committee language say is their intent, and au-

thorize something that does not violate the ABM Treaty?

Will the hard right, who are part of the coalition supporting the committee bill, give their permission to the sponsors of the committee bill to accept this amendment? That is the question of the hour, and we will wait here until we find out the answer. The answer is critical because last night the Senate said, "Let us move to deploy a system." The sponsors of the committee bill say, "We did not make a decision to deploy."

We did. We voted to direct the Secretary of Defense to develop for deployment this system. We said it is our goal to deploy this system. Can we undo it? Perhaps. I hope that we will. But the critical question now is whether or not what we are doing in authorizing that system is implying support for a system that will violate the ABM Treaty before we know what can be negotiated by way of changes to the ABM Treaty.

Mr. NUNN. Will the Senator yield?

Mr. GORE. Let me finish my statement briefly. If we reject the Levin amendment, then the Senate will be saying that the ABM Treaty is dispensable. So I hope that the sponsors of the committee bill will accept the amendment. I hope——

I started to say I hope the other half of their coalition will stay on the reservation.

Actually, I hope that their coalition is fractured so that this plan will not survive, but I do seriously hope that the sponsors of the bill will accept this amendment.

Mr. NUNN. Will the Senator yield for a brief question?

Mr. GORE. It is not my time.

Mr. NUNN. On my time.

Mr. GORE. But I would be happy to do so.

Mr. NUNN. I observe to my friend from Tennessee I hope the general counsel of the Department of Defense does not read statutes that we pass in the broad terms the Senator from Tennessee seems to read them, because over and over again he has said we are authorizing the deployment of an ABM system.

I repeat, I do not understand how the Senator can come to the conclusion that we are authorizing the deployment of a system when you have to come back every single year and when we say in the bill itself we are authorizing for development with a goal of deploying. That is what the amendment says. I do not understand how this is authority for the Secretary of Defense to deploy.

How is he going to get the money? Does the Senator believe he is going to be able to build a system that everybody would say would cost $10 billion with the $45 million we have in the bill? How is that authority? When we say we are authorizing the building of four B–2's, if we put $6 million in there when we know they cost $450 million apiece and do not even use that word, I do not understand how the Senator can get to that logic.

Again, I know he reaches that conclusion sincerely, but I hope that no one reading this in the Department of Defense—no one, certainly no lawyer advising the Secretary of Defense—would refer to the Senator's statements and assertions as the interpretation of congressional intent, because the statements made by the Senator from Tennessee are not our intent. They are not our words. They are not in any way the intent of the authors; anyone reading it will understand that.

So I note for the record I do not believe that general counsel of the Secretary of Defense, when advising the Secretary of Defense what is authorized, what is his authority, can in any way conclude what the Senator from Tennessee obviously concludes.

Mr. GORE. Will the Senator from Michigan yield me 1 minute on his time?

Mr. WARNER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. WARNER. Mr. President, I will be glad to let the Senator continue for a minute, but at some point I want to enter this debate and correct a few things.

Mr. GORE. I appreciate my colleague's courtesy.

Before the Senator from Georgia leaves the floor, let me just say in response to his question about how I can read the language in the way I do concerning deployment, let me simply read the language, two parts of the committee bill, the beginning and then the second page.

First, we declare if we vote for this, "It is a goal of the United States to deploy an anti-ballistic-missile system." Reading further, "The Congress directs the Secretary of Defense to develop for deployment by fiscal year 1996."

Now, if this is not a direction to deploy or a commitment to deploy, then the sponsors of the bill should have no problem accepting the amendment of the Senator from Michigan to say we are not authorizing or implying congressional authorization for a system that is going to violate the ABM Treaty.

Mr. NUNN. Will the Senator yield?

Mr. LEVIN. Will the Senator yield?

Mr. GORE. I am on the time of the Senator from Virginia.

Mr. WARNER. Mr. President, that was not the understanding.

Mr. LEVIN. Will the Senator yield for a request for the yeas and nays? While the Senator from Rhode Island is on the floor, will the Senator from Virginia yield for a request for the yeas and nays.

Mr. WARNER. Mr. President, I yield the floor to allow the chairman to respond.

Mr. LEVIN. Will the chairman yield for a request for yeas and nays, while my friend from Rhode Island is on the floor?

Mr. NUNN. I yield.

Mr. LEVIN. I request the yeas and nays, Mr. President.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. NUNN. Mr. President, may I make a brief response to the Senator from Tennessee.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. NUNN. Mr. President, I would just like to advise my friend from Tennessee that I define the word "goal" in the legislation much different than the Senator from Tennessee.

There is a goal on the books of full employment in the United States. That does not give the President of the United States the right to go out and spend $400 million additional to provide jobs.

There is a goal on the books of law in the United States saying everyone in this country should have a house—a housing goal. I support that goal. But unless the President has the money, he cannot go out and give everybody a house or build a house or make loans.

There is a goal in the disarmament act that basically says, we want the world to disarm, including ourselves, and we do not want these weapons around. There is nothing that would give the chief executive officer the right to get rid of our weapons without coming back to the Congress under that goal.

So I guess where the Senator from Tennessee and I have a fundamental different interpretation is that he believes when Congress expresses a goal, we have then turned over to the chief executive officer total authority to implement that goal, and that is simply not the case.

That is not the history of this country. That is not the way laws are read. That is not the way laws are interpreted. If they were, then the President of the United States would already have such authority under the laws on the books, he could do anything he wanted to without coming back to Congress, including spending money, which is barred by the United States Constitution.

Mr. WARNER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. WARNER. Mr. President, I yield myself such time as may be necessary.

Mr. WARNER. Mr. President, I think we should clarify a few things this morning. First, in defense of the Senator from Wyoming, whose name the Senator from Tennessee invoked earlier today in a manner which is totally inaccurate, the first communication I received this morning as the manager on this side was that the Senator from

Wyoming felt we should give very careful consideration to the amendment now before the Senate from the Senator from Michigan. He thinks it has merit, and I am now, together with the chairman, giving careful consideration to the possible adoption of this amendment. But we felt in fairness we should debate it.

I think the Senator from Michigan ought to clarify another point. The Senator from Tennessee inferred that this was the amendment, the one that is pending now. There are 3 amendments the Senator has offered. There was an amendment in committee, there was an amendment which was passed out last night, which was the basis for the unanimous-consent request, and there is a third one presented this morning. Each of them have distinct features. They are not one and the same amendment. Am I correct, Mr. President? I ask that question to the Senator from Michigan.

Mr. LEVIN. The Senator is partially correct.

Mr. WARNER. Not partially.

Mr. LEVIN. The Senator is partially correct. Let me respond to the Senator's question.

Mr. WARNER. Yes.

Mr. LEVIN. The amendment which was offered in committee would have stated the goal as negotiating changes in the ABM Treaty so as to permit the deployment of the systems which the sponsors sought. That was different, different language obviously from the amendment which I offered this morning. The Senator is correct on that one.

Mr. WARNER. Will the Senator from Michigan put that in the Record. Let us put them side by side, 1, 2, and 3.

Mr. LEVIN. Not 2, because I have never circulated a No. 2. I do not know what the Senator saw last night. I did not circulate an amendment last night.

Mr. WARNER. Mr. President, I ask the Senator from——

Mr. LEVIN. I do not know who circulated a version, but this amendment has gone through many, many drafts. If I could reassure my friend from Virginia, there have been at least—much more than 3. There have probably been 10 drafts of this amendment, as there are of all amendments. There are many amendments which come to the floor of the Senate. So I do not know to which version the Senator from Virginia is referring. But let me just tell the Senator—let me tell my friend from Virginia I did not circulate a draft of my amendment last night.

Mr. WARNER. Mr. President, I hand to the Senator from Michigan the document that was given to this Senator last night as a basis of the unanimous-consent request, and ask him if he can possibly identify it.

Mr. LEVIN. This is one of many drafts. In fact, it is No. 1-A. It is not even in amendment form. I do not know where this came from. I did not circulate this draft.

Mr. WARNER. Mr. President, the Senator from Virginia represents it was handed to him last night. I think we can certainly agree that there has been some confusion as to what is the draft, until this morning, when we arrived we were given the amendment. And that is the one that——

Mr. LEVIN. I cannot agree there has been any confusion at all.

Mr. WARNER. It is certainly different than the one that was considered by the committee. The Senator has acknowledged that fact.

Mr. LEVIN. Obviously, it is different from the one that is——

Mr. WARNER. Well, then, Mr. President, the chairman and I were handed an amendment this morning, which was different than the one considered in the committee, the one that was given to this Senator last night as the basis for the unanimous-consent request.

The chairman and I, I think in a very conscientious way, have been communicating with our colleagues in an effort to see whether or not this can be resolved. It is not a question, I say to the Senator from Tennessee, of the hard right bearing down the fragile coalition. I think very quiet, dispassionate, consideration is being given and it continues. And this debate is helpful. I wish to make one or two other points, and then I will yield the floor.

Mr. GORE. Will the Senator yield for a brief question?

Mr. WARNER. I say to my friend from Delaware if he will read the goals, the second goal is maintains strategic stability. That implies to this Senator to maintain the core of the ABM to which he referred. So the time is growing short on our side.

Mr. BIDEN. Will the Senator yield on my time? If that is what the Senator means, would he object to the Senator amending the provision to say precisely that?

Mr. WARNER. Mr. President, at this point in time we have the pending amendment. We will consider anything the Senator wishes to bring forward.

Mr. BIDEN. No, I am just suggesting.

Mr. WARNER. I will be happy to consider it in the context of many other amendments which are pending.

Mr. BIDEN. I am only trying to accommodate the Senator from Virginia who just told me what that meant. If that is what it means, then it differs from my understanding and I believe that of most Senators. I respectfully suggest to the Senator from Virginia to send that amendment to the desk, and I am sure it would be accepted unanimously right now if that is what he really means.

Mr. WARNER. In the few seconds I have remaining, Mr. President, I also ask unanimous consent that a paper prepared by Sidney Graybeal which addresses the question of what is permitted under the ABM Treaty be printed in the RECORD at the conclusion of this set of remarks.

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

(See exhibit 1.)

Mr. WARNER. Mr. President, Graybeal clearly states that we can incorporate into ABM system censors. He states space-based sensors which communicate with command and control centers and not directly with the interceptors are permitted by the treaty and would greatly enhance the effectiveness of the ground-based GPALS system.

EXHIBIT 1

GPALS[1] AND THE ABM TREATY

(By Sidney N. Graybeal and Patricia A. McFate)

APRIL 3, 1991.

1. What are the real threats that the GPALS systems are being designed to counter? (Soviet, Chinese, and Third World ballistic missile capabilities and intentions)

2. "PALS" stands for "Protection Against Limited Strikes." "Limited Strikes" mean accidental or unauthorized ballistic missile launches. Presumably this could include the unauthorized launch of an SSBN load of SLBMs, that is 100 to 200 RVs. In our opinion, such "limited strikes" would not include a deliberate attack by the Soviet Union or any other developed country, for example, China. "Limited" is being interpreted by some to include deliberate strikes by the Soviet Union. There is no plausible rationale for a deliberate Soviet or Chinese attack on the U.S. involving ballistic missiles delivering 100-200 RVs.

3. Presidential Direction (in the State of the Union Address of 29 January 1991): ". . . Looking forward, I have directed that the SDI program be refocused on providing protection from limited ballistic missile strikes, whatever their source. Let us pursue an SDI program that can deal with any future threat to the United States, to our forces overseas and to our friends and allies."

4. "Protection Against Limited Strikes" (accidental or unauthorized) is in the U.S. interest. However, the key questions/issues are:

a. What are the real threats which GPALS defenses should be designed to protect against?

b. What types of BMD systems are required to meet the real threats?

c. What are the relationships to the ABM Treaty, and how should these relationships be managed?

5. In magazine articles, newspaper op-ed pieces, and other public sources, there has been confusion over the use of "T" in TPALS. (TPALS is now included in GPALS and is no longer a separate program concept.) Did it represent tactical or theater?

Since the war in the Gulf, some SDI supporters are causing confusion by linking ATBMs (such as the popularly acclaimed Patriot) which are not limited by the Treaty with SDIO systems now designated for support in the theater (TPALS concepts included space-based interceptors, as does the current GPALS defense against theater/tactical ballistic missiles). Space-based interceptors are prohibited by the ABM Treaty; space-based sensors which do not commu-

[1] GPALS includes defenses for strategic and theater/tactical ballistic missiles.

nicate directly with ABM interceptors are not limited by the Treaty. There appears to be an effort to create the impression that *any* theater ballistic missile defense, even though it includes space-based components, is permitted because it is not a territorial defense of either the U.S. or the U.S.S.R.

6. What are the *real* threats which GPALS defenses are designed to protect against?

a. According to Director of Central Intelligence William Webster, by the end of the century, 15 to 20 developing countries will be capable of producing ballistic missiles, some with ranges of 3400 miles.

b. SDI Director Henry Cooper's recent briefing notes that approximately 18 nations currently possess ballistic missile capabilities, and by the year 2000 this number could be about 24.

7. What types of BMD systems are really required to meet the real threats?

a. *GPALS* Protection of U.S.—Continental, Alaska, Hawaii:

Advanced space-based sensors—These are not limited by the ABM Treaty.

Fixed Ground-Based Interceptors (E2Is) and fixed radars (GBRs)—These would require a modification of the ABM Treaty permitting additional deployment sites (perhaps 5 or 6) with a limited number of interceptors (perhaps 100 per site) with no rapid reload or MIRVed capabilities. Space-based sensors which communicate with command and control centers and not directly with the interceptors are permitted by the Treaty and would greatly enhance the effectiveness of the ground-based GPALS system. Such a fixed ground-based GPALS deployment would be capable of handling the *real* threat to the U.S. without violating the basic premise of the ABM Treaty contained in Article I: "not to deploy ABM systems for a defense of the territory of its country and not to provide a base for such a defense . . ."

In our opinion, no space-based interceptors are required or should be tested or deployed. Such testing and deployment in the constellations and resulting numbers required to meet the real or perceived deliberate Soviet threat would violate several ABM Treaty Articles (I, III, IV, V, and VI). (A deployment of space-based interceptors could also raise some Outer Space Treaty concerns.) Research and development would be continued as a hedge against future uncertainties.

b. GPALS Protection of our forces overseas and our allies:

Advanced ATBM systems (PAC II, ERINT, ARROW, ACES, and/or THAAD) which could be deployed on the ground, on naval vessels, and on aircraft. They would not be deployed in space, but would be assisted by advanced space-based sensors. Some are exploring the possibilities of a "space-based ATBM system." In our view, any such system would also be capable of intercepting strategic ballistic missiles, and as such would clearly be a space-based ABM system. Space-based sensors would be required; in our opinion, space-based interceptors would not be required.

ATBMs are not limited by the ABM Treaty, unless they are given "capabilities to counter strategic ballistic missiles or their elements in flight trajectory" or are "tested in an ABM mode" (Article VI).

Such Treaty-consistent unlimited deployments of ATBM systems would meet the real and emerging Third World ballistic missile threats without creating difficult and unnecessary ABM Treaty issues.

8. ABM Treaty Issues:

a. Testing and deployment of space-based interceptors are prohibited; relaxing the Treaty constraints to permit such testing or deployment would be inconsistent with Treaty Articles (I, III, IV, V, or VI).

b. U.S. ground-based BMD systems to protect against accidental or unauthorized ballistic missile strikes do not require such a large number of interceptors as to be inconsistent with Article I, and they need not involve mobile missiles, launchers, or radars, which are prohibited by Article V, for survivability against an accidental or unauthorized launch.

c. Advanced space-based sensors to support GPALS are not limited by the ABM Treaty provided that they are not substitutes for an ABM radar or are not tested in an ABM mode. They can and should be pursued to support both ground-based, sea-based, or air-based GPALS defensive systems.

d. ATBMs are not limited by the ABM Treaty unless they are given capabilities to counter strategic ballistic missiles or are tested in an ABM mode. (Soviet SAM upgrade concerns were the dominant considerations in drafting and implementing the Treaty.)

ATBMs have an inherent ABM capability; the issue is what constitutes a significant ABM capability.

What constitutes a "strategic ballistic missile" in the context of the ABM Treaty is a subject which is both controversial and abused. In our view, and in the views of others directly involved with the ABM Treaty, the SALT I, SALT II, and SCC negotiations make clear that the Soviet SS–N–6 SLBM (range of about 3000 kms) is a strategic ballistic missile; ballistic missiles with performance capabilities similar to or greater than the SSN–N–6 are strategic ballistic missiles in the context of the ABM Treaty. Tests of any defensive system against such strategic ballistic missiles, whether successful or not, would be a "test in an ABM mode," and thus make the system being tested an ABM system subject to the Treaty limitations.

The Soviet SA–12 is not considered to have significant ABM capabilities or to have been tested in an ABM mode; thus, U.S. ATBM defensive systems can and should be at least as capable.

e. In deciding what is permitted or prohibited, there must be no "double standard." We should not take any action or establish any criterion which, if taken or established by the Soviets, would be detrimental to U.S. security.

f. Since the ABM Treaty is verified by NTM, some apparently believe that if an activity cannot be observed by NTM, it is permitted regardless of its purpose and intent. This sentiment resembles the thought that it is all right to violate the law if no one is looking.

9. In our opinion, the following course of action would both meet U.S. security requirements and maintain the basic purpose of the ABM Treaty:

a. Recognize that the ballistic missile threat to the U.S. and to our overseas forces and allies has changed and will continue to change.

The likelihood of any deliberate Soviet ballistic missile attacks on the U.S. or its allies does not exist; however, the possibility of an accidental or unauthorized launch cannot be precluded.

Third World nations are acquiring ballistic missiles, but none other than China would be capable of striking the U.S. with more than a very few ballistic missiles (less than 10).

Deployment of ATBMs to meet the Third World ballistic missile threat would not undermine the basic premise of the ABM Treaty, provided such systems are not given significant ABM capabilities and deployed widely within the U.S.S.R. and the U.S.

b. Recognize that the ABM Treaty remains in the U.S., Soviet, and world interest in this changing environment.

It is not in the U.S. or Soviet interest to acquire a nationwide BMD system capable of countering a massive deliberate missile attack, or to deny the U.S.A. continued effective extended deterrence capability.

The British and French would not like to see a nationwide Soviet ABM system.

It remains in the U.S. interest to preclude effective ABM systems being transferred to other nations.

c. Negotiate clarifications and/or modifications in the ABM Treaty as required to perform the necessary testing of ATBM systems, and to permit the needed additional fixed, ground-based ABM deployments.

In view of the emerging Third World ballistic missile threats, and the reduced likelihood of a deliberate Soviet attack, it is desirable to reach agreement with the Soviets permitting flexibility in testing ATBM systems to give them the needed capabilities to protect our forces, allies, and friends.

The ABM Treaty originally permitted two deployment sites (reduced to one site in 1974). Providing adequate protection against accidental or unauthorized launches of strategic ballistic missiles involving up to 100–200 RVs would require about 5 or 6 sites, each containing no more than 100 fixed, ground-based interceptors and launchers with no rapid reload or MIRVing, and one or more fixed, ground-based radar at each site.

d. Recognize that clarifications and modifications of the ABM Treaty were accomplished by the SCC in the "1978 Agreed Statement." (This Statement, which is currently classified SECRET, should be declassified; there should be no classified Agreements which clarify or modify an unclassified Treaty.)

e. Recognize why there have not been additional ABM Treaty clarifications or modifications. The ABM Treaty is 19 years old. Emerging technologies, and changing threats have overtaken its original provisions, many of which need agreed clarifications, which could have been accomplished in the SCC if it had not been for positions taken by senior Reagan Administration officials. For example, Richard Perle openly testified that the ABM Treaty was a mistake and that the quicker the U.S. got rid of it, the better. Therefore, it was not possible to initiate or engage in any discussions with the Soviet Union on further clarifying the ABM Treaty. In addition, the unfounded "broad interpretation" of the ABM Treaty and the resulting U.S. position in the D&S talks based on this erroneous interpretation precluded such negotiations. However, we should now be focusing on what are the U.S. security needs which require clarifications or modifications to the ABM Treaty consistent with its basic purpose; we should not re-open the broad versus the narrow debate which will neither resolve or clarify the Treaty issues necessary to meet U.S. security requirements in this changing world.

f. Recognize that the ABM Treaty continues to be in the U.S., Soviet, allies, and world interest. Considerations of withdrawal and abrogation should be dropped.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. BIDEN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. BIDEN. Mr. President, before I begin my statement, let me suggest to

the Senator from Virginia regarding his last statement, we support those. We support that which we just cited as being acceptable under the ABM Treaty. It does not go to the heart and essence of the treaty which I would like to discuss for a moment.

From time to time distinghished colleagues of ours have come to the floor, in particular the chairman of the committee and the ranking member, and they have used a very interesting argument which I think requires some careful examination. It is an argument I will label here as the "insidious argument of supposedly innocent constant ratios."

This is how the argument follows if my colleagues will bear with me. First, the Senators say, and the Senator from Georgia in particular says, and quite rightly, that the ABM Treaty's essential purpose is to support the idea of deterrence. It does this by ensuring that each side remains confident that its retaliatory capability will not be jeopardized by a first strike. So far, so good.

Then they go on to say, in light of this purpose, that our focus should not be on the number of defensive or offensive systems that we have but on the relationship between them. If defensive systems are small enough in number, as compared to offensive systems, the argument then states that the defensive systems will not pose a threat of being able to mop up a retaliatory strike. So the logic continues. It does not matter how many defensive systems there are.

Thus far, this sounds fairly good. But, then the Senators who argue this point begin to approach thin ice.

Next, the Senator notes that when the ABM Treaty was signed, both the Soviets and the United States had approximately 2,000 warheads and agreed that each could deploy 200 interceptors, a number I might note later reduced to 100 by a protocol 2 years later. Again, that is all true.

From there, the Senator from Georgia and others go on to point out that the number of warheads on each side has increased substantially since then, up to the START level of 7,000 to 9,000 warheads on each side. Again that is true.

Then comes the coup de grace. The Senator asks us this: If absolute numbers do not count, and if the number of offensive weapons have gone up by a factor of four, why not should the number of defense systems be able to go up and still be completely consistent with the philosophy of the ABM Treaty? Offensives will still be able to overwhelm defenses in a full strike.

So we get the benefit of the ABM Treaty's philosophy of assured retaliation, and he and others argue that we also get the added benefit of a defense against the alleged danger of a limited strike. Indeed, last evening, the Senator from Georgia asked rhetorically, even if the United States built three sites rather than one "How can that possibly be a threat to retaliation?"

Let me try to answer what I have termed the "insidious argument of the supposedly innocent constant ratio."

The answer requires some elaboration. If my colleagues will bear with me a moment, what it boils down to is a fairly simple point; that is, that when you increase numbers of defensive systems, you do not just change quantitatively. You change qualitatively as well; changes that alter the perception, the planning, and the strategic deployments of your adversaries, changes that alter the possibility of strategic arms reductions. Let me explain.

The single site allowed under the ABM Treaty guidelines has a very specific purpose. It is meant to protect either retaliatory missile capability or command and control capability; both with the same purpose of ensuring retaliation. This function is intended to be accomplished without violation of article 1 of the treaty, under which the parties pledge themselves not to try to create a territorial defense or to build a base for such defense.

For the single site, and with 1972—repeat, 1972—technology, there is no conflict between the function performed by a single site, and the goal of preventing a full territorial defense. But when you begin to move toward multiple sites and combine those sites with 1990's technology, you very quickly move into the realm of building a base for a widened territorial defense.

When you do this, you begin to undermine very profoundly the entire rationale of the ABM Treaty. For when one party is on the verge of building a territorial defense—in other words when it has achieved what is known as a "breakout potential"—then the other side is no longer in a position to limit its strategic offensive forces if it wishes to ensure its retaliatory capability.

For why would they do that? Why would they beforehand agree to reduce the number of offensive weapons they need to overwhelm any defensive capability, when they see on the horizon the potential for the other country to break out very rapidly in a short amount of time from a system that does not violate the treaty at the momemt but puts them in the position to quickly leap forward to be able to provide for territorial defense? Why would they do that? The other country simply cannot drastically reduce its offenses, even through mutual arms reductions, if the other side is in the position to deploy, with relative speed, a full-blown territorial defense.

Thus, while it may be theoretically possible to maintain nuclear stability with some combination of expanded defenses and strategic offenses, to expand defenses almost certainly means that we are foreclosing the opportunity for substantial reductions in offensive systems. And we are foreclosing that opportunity, in one of the great ironies in the history of this body, on the very day that the signing of the START I agreement opens the possibility for the first truly substantial reductions in the history of arms control.

If one did not know better one could easily be led to conclude that the proposal represents a perverse collaboration—unintended, I am sure—between hardliners on our side and hardliners on the Soviet side—neither of whom wishes to see substantial reductions in offensive nuclear arms.

I might not, parenthetically, that START should only be that—a start—a start of the process toward further reducing, substantially, our offensive nuclear capabilities on both sides.

Are we really so in love with the cold war and all its accompanying ideological and military paraphernalia that we are going to act, perhaps inadvertently, but in effect, in league with Soviet hardliners to prevent what now appears possible: A real superpower partnership in the negotiation of deep cuts in nuclear arms?

The point is simple and powerful: The breakout potential represented by an expanded, full-territory defense erects a tremendous wall in the path of arms control.

And to erect that wall means to block the possibility of reducing the level of Soviet nuclear weapons targeted today—in overwhelming numbers—at the people of the United States of America.

But perhaps the matter can be put even more simply. The Senator from Georgia says that what counts is the ratio between offensive and defensive systems. And he asks us why, since offensive arms have increased in number, we should not deploy defensive systems that keep the ratio roughly constant?

I respond with another question:

Does the Senator's own question not belie a willingness to see offensive systems remain indefinitely at the higher level?

Does it not, in other words, belie a willingness to see reductions in strategic arms end right now, as some are proposing?

If the Senator is interested in maintaining the ratios we had in 1972, why does he not devote his attention to bringing offensive systems back down to where they were then? In 1991, after START, they are still three to four times as high as they were in 1972.

If we are to express our love for constant ratios between offensive systems and defensive systems, why not let us express that love by favoring the ratio between a small number of offensive systems and a small number of defensive systems, rather than locking ourselves into the same ratio at higher levels—by erecting expanding defensive

systems so that the level of offensive systems can never come down? That is exactly what we will be doing.

Last evening, the Senator from Georgia was at some pains to portray the Soviet arsenal as constituting a threat to the United States because of the alleged dangers of accidental launch and political chaos.

We have had many expert witnesses before the Foreign Relations Committee—from the military, from the intelligence community, from academia—and we have heard no witness assert that these dangers are growing in any way that constitutes a threat to the United States warranting the radical ABM Program contained in this bill.

But let us assume for a moment that these experts are wrong—that there is such a danger.

Why are the Senators from Georgia and Virginia not all the more anxious to reduce that Soviet arsenal as quickly as possible, rather than seeking, on the inaugural day of the START era, to erect what will be a serious and perhaps fatal impediment to arms control?

I am very saddened to say that I do not see that the Senator from Georgia can reconcile the ABM provision in this bill with the position we in the U.S. Senate should now be taking if we wish to provide the optimum climate for fulfilling the full arms control opportunities now within our grasp. Unfortunately, I just do not think the Senator can square that circle.

So, Mr. President, at the heart of my objections to what is being undertaken in the DOD bill is that the net effect—I suspect and believe unintended—will come at the very moment in history when we have agreed upon, and have found a methodology and means by which we can, with certainty, verify that each side is capable of reducing and destroying nuclear arsenals, strategic arsenals. At that very time when we have acknowledged that principle and signed the first step toward doing that, we in the U.S. Senate are setting a goal—a goal, whether or not it is compliant with the ABM Treaty, that is at odds with the notion of further reducing those nuclear arsenals.

The PRESIDING OFFICER (Mr. KERREY). All time yielded to the Senator from Delaware has expired.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I yield myself half a minute.

As I view the situation, the amendment that is now before us, which is different than the others that I have seen, this amendment would restate the fact that the committee provision on missile defenses does not authorize acts in violation of the ABM Treaty. That is this Senator's interpretation and I accept it for that purpose.

Mr. NUNN. Mr. President, what is the time we have remaining?

The PRESIDING OFFICER. The Senator from Georgia has 4 minutes and the Senator from Michigan has 2 minutes.

Mr. NUNN. What is the pleasure of the Senator from Michigan?

Mr. LEVIN. I need 1 minute, but the Senator from Georgia may speak first.

Mr. NUNN. Mr. President, in markup, as I mentioned a few minutes ago but did not get into detail, the Senator from Michigan proposed to amend the SDI provision in the bill, and it is the same committee provision we have before us, to state that the goal for future ABM deployments be described as treaty compliant ABM systems. The Senator said this would not mean any future ABM system must conform to current text of the treaty as we interpreted the amendment in committee which did not pass. He interpreted it meaning it must conform to whatever future changes might be successfully negotiated in the treaty.

Since there are a lot different views what that would be, I think that would be very ambiguous. As I read this amendment I see it as being totally different. We have goals set forth in this committee provision. The committee provision has the goal that this system be treaty compliant. We set forth two tracks on that. One is an architecture and the other is a negotiating track. And I would say even a subpart of the architecture would be going forward with the treaty compliant system at the initial stage.

That is not the only goal we have. And I am sure for some people that is the only goal they have. The only goal they have is complying with the ABM Treaty, period. But the committee and I believe the majority of this body has another goal, and that is the goal and the hope that we can provide effective limited defense for the United States. And I emphasize "for the United States."

So those are two goals and they are parallel and we hope they will prove to be consistent goals. If they prove not to be consistent goals, then at some point in the future the President and Congress will have to help and make the decision to choose between those goals, if we get to that point, and we hope we will always have them consistent. That was the amendment we dealt with in committee.

The amendment offered to this bill this morning is a different amendment. It is greatly improved compared to the amendment offered in markup. I believe this amendment accurately states the intent and interpretation of the committee with regard to the plan we are proposing.

The committee agrees that nothing in this act can or should be construed as implying congressional authorization for SDI development, test, or deployment in violation of the ABM Treaty. That is what this amendment says, and therefore I agree with the amendment and I will vote for the amendment.

Mr. President, while I agree with and can support the amendment, I point out that there are a number of terms of art in the amendment which must be understood within their proper context.

First, the amendment says there is no implication in this act for congressional authorization of certain specified activities. The key word is "authorization."

As I said repeatedly in the debate yesterday and have said repeatedly in dialog with my friend from Tennessee, this act does not authorize the deployment of multiple ABM sites; it does not even authorize the deployment of the treaty-compliant site at Grand Forks. It authorizes only those funds contained in the bill and for the purposes specified in the bill and its accompanying report.

Second, the amendment uses the words "development," "testing," and "deployment." These are key words. They have specific meaning within the context of the ABM Treaty and are defined by the treaty as elaborated in the treaty negotiating history.

There is no authorization in this act for ABM development, testing, or deployment in violation of the ABM Treaty. The ABM Treaty does not, however, limit planning. It does not limit studies or analyses. It does not limit research, even though the Soviets tried to argue that, with what I considered to be a preposterous view a few years ago in the 1980's, and they finally dropped off of that argument. So it is important that we understand these words of art.

I would refer the Senator from Michigan—I know he is very familiar with this, but in each year in the report that goes along with the Levin-Nunn amendment we have made it clear as to what the Levin-Nunn amendment does and does not do.

On page 170 of this year's committee report, we describe the Levin-Nunn amendment as follows: "In recommending this provision the committee agrees that nothing in this limitation is intended or may be construed to preclude SDI or contractor planning activities, including studies, design activities or computer simulations related to any development or testing of ABM systems or components, including development and testing not described in the May 1991 SDI report." And what that means is in effect compliance with the traditional interpretation.

So I think the Senator's amendment, which he has led the way on, I think with a great deal of foresight for the last approximately 4 years—in the report describing that amendment it is clearly the distinction between these words and it has always been clear and I trust it will continue to be clear.

In summary, Mr. President, in this act we say the Defense Department can make plans for an SDI architecture for

a limited defense system that would require modifications to the ABM Treaty. However, we authorize no development, testing, or deployment that would violate the ABM Treaty as now constituted.

Mr. President, I hope that we can have a very strong vote for this amendment because I think the Senator from Michigan and the Senator from Delaware have done a real service here in making absolutely clear what the bill means and what it does not mean, and I would say this is exactly what the bill means.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I yield myself the remainder of my time.

There has been debate here about goals. My friend from Georgia said this is just a goal and the language of the committee. That goal could have been stated as a goal to negotiate changes in the ABM Treaty to permit the deployment of limited defenses. But it was not. The goal was stated as the deployment of those limited defenses with no connection to negotiation. No ifs, no ands, no buts. It was a goal to deploy systems which violated the ABM Treaty.

Now, Mr. President, that is a lot different than a goal for full employment or a goal for a house for everybody which my friend from Georgia talked about. Those are legal goals. The goal in the committee language is a goal to deploy systems which violate a treaty, very different from a goal that there be a house for everybody that is decent and that everybody have a job. So this language of this amendment which I am offering on behalf of myself, Senator BIDEN, and Senator CHAFEE is intended to make it clear that the Senate is not approving in this bill any activity including development, testing, or deployment, of any system that is in violation of the ABM Treaty. That is the intent of this amendment. And I am stating it clearly so we all know what we are voting on.

Mr. NUNN. Mr. President, will the Senator from Michigan yield for one brief question?

Mr. LEVIN. I yield.

Mr. NUNN. Is the word "activity" in the Senator's amendment?

Mr. LEVIN. The words are "development," "testing," and "deployment."

Mr. NUNN. But not "activity"?

Mr. LEVIN. Those are activities; every one of those are activities, only relevant activities.

Mr. NUNN. There are other activities not included in those words, including thinking.

Mr. LEVIN. Those are the key activities which this ABM debate is about. Those are the activities that violate the ABM Treaty. Thinking does not violate the treaty.

The PRESIDING OFFICER. The time has expired.

Mr. NUNN. The Senator was clarifying his amendment and I think in clarifying it he used the word "activities" as a word in addition to development and testing. I believe what he intended was that the activities that were directed to are the words contained in his amendment.

Mr. LEVIN. In fact, those are the key activities that are always in debate relative to the ABM Treaty because those are the activities which violate the treaty.

Mr. NUNN. Correct. But there are other activities which do not violate.

Mr. LEVIN. Thinking does not violate the treaty. As a matter of fact, hopefully it is very consistent with the ABM Treaty.

Mr. NUNN. I would hope, if thinking would violate the ABM Treaty, we have all violated it during this debate. But I agree with the Senator it does not.

If I have any time remaining, I yield it back, and I believe the yeas and nays have been ordered.

Mr. LEVIN. Yes.

Mr. BIDEN. Mr. President, it is a cruel irony that we are debating the Missile Defense Act of 1991 today, when just yesterday President Bush signed a START treaty whose stabilizing reductions in offensive nuclear arms will so greatly benefit our Nation's security. Without the ABM Treaty's limits on missile defenses, the signing of START would never have been possible. And now even though it is signed, START's reductions may never be carried out because of the Warner-Nunn SDI deployment plan.

This legislation authorizes an ABM deployment at the single site permitted by the ABM Treaty. Even that seemingly innocuous step would shift SDI from an R&D program to a deployment program that will cost tens of billions of dollars, that neither the administration nor the Joint Chiefs of Staff have called for, and that has not been the subject of a single hearing before any committee of this body.

Equally alarming, this legislation calls for fundamental amendments to the ABM Treaty. There are those in this body who say the amendments it calls for are only "modest" changes, who argue that we can support these changes without abandoning the object and purpose of the ABM Treaty. Do not be fooled. The changes this bill calls for would rip the heart right out of that agreement. As Ambassador Gerard C. Smith, the chief negotiator of the treaty, put it:

> Amending the ABM Treaty to permit nationwide, multiple-site ABM defenses and unlimited orbiting ABM battle managers would be like amending Prohibition to permit the sale of liquor.

And if we urge such amendments on an administration bent on junking the ABM Treaty in pursuit of global defenses, we are starting down a slippery slope, opening the door to amendments even supporters of this bill may be sorry to see.

Mr. President, the Warner-Nunn star wars plan presents four dangers. It undermines United States security by eliminating protection against Soviet ABM systems. It would eviscerate the ABM Treaty. It would complicate the implementation of START and virtually eliminate hopes for further strategic arms reductions. And it would waste tens of billions of dollars.

DANGER ONE: UNDERMINE U.S. SECURITY

The purpose of arms control agreements, including the ABM Treaty, is not agreement for agreement's sake, but improving our security. As six Secretaries of Defense have said, the ABM Treaty has accomplished that goal. By jeopardizing the ABM Treaty, this bill could jeopardize our security. The critical point is the one my distinguished colleague from Georgia made in debating another Warner ABM proposal in March: "this is not a one-way street. When you remove restrictions on America, you also remove restrictions on the Soviet Union."

It was not so long ago that many of my colleagues on the other side of the aisle—including some of the sponsors of this legislation—expressed great concern that the possibility of a Soviet ABM breakout was a dire threat to United States security and the United States nuclear deterrent. They pointed to the Soviet Union's network of early warning radars like the illegal Krasnoyarsk radar now being dismantled, and to various other Soviet activities, as a likely base for a nationwide missile defense. Others disagreed: Former Chairman of the Joint Chiefs of Staff Adm. William Crowe for example, in his down-to-earth style, said that "there is evidence that the Soviets have not been doing as much—on ABM—as we thought. There's been a lot of hoopla about this stuff which I think has been misleading."

But this legislation would encourage the Soviet Union to replace those early warning radars with a nationwide network of genuine ABM battle-managers, each armed with a substantial number of ABM interceptors, with even more battle-managers in space, and a nationwide command infrastructure—all the necessary elements for rapidly building a larger, deterrent-threatening defense.

In essence, the bill proposes to permit what some in this body have long feared, giving the Soviet Union permission to build a nationwide missile defense and the base for breakout to something even bigger. What are the security implications of this step? Has anyone put that question to the Joint Chiefs? Has anyone asked the SAC commander whether he could carry out his operational plans with the reduced forces permitted under START when facing a nationwide Soviet ABM system with hundreds of interceptors—one that could be rapidly expanded? Has

anyone asked the intelligence community how rapidly the Soviet Union might be able to expand its ABM deployments from the base that would be permitted under these amendments?

Frankly, I am surprised and disappointed that advocates of this amendment have avoided these troubling questions. Perhaps, in the new post-cold war era, we should no longer be so concerned about potential Soviet breakout from arms agreements. But given how much concern has been expressed over the details of the verification and breakout protection provisions of START, it appears that most of the Members of this body are not yet ready to sign up to arms control agreements that provide no adequate guarantees against violation. If we feel that way on the offensive side—where, realistically, a violation of even hundreds of warheads would do little to undermine U.S. retaliatory power—how can we so cavalierly suggest disposing of the breakout protection provisions on the defensive side?

It is for these reasons that former Secretary of Defense Harold Brown, in March of this year, explicitly opposed proposals to substantially modify the ABM Treaty.

THE SECOND DANGER: THE END OF THE ABM TREATY?

The second danger that springs from the amendments proposed in this bill is what it will do to the ABM Treaty, the foundation stone of nuclear arms control.

Today, even with the cold war over, the principles of the ABM Treaty remain valid. The ABM Treaty recognized the simple fact that if either superpower began deploying widespread missile defenses, the other would be forced to increase its offensive forces to overcome them, touching off an expensive and dangerous missile antimissile race.

Unfortunately, Mr. President, eroding the ABM Treaty—indeed, critically weakening it—is precisely what this legislation would do. This Senator would be the last to call the ABM Treaty Holy Writ, or to argue that we must jealously guard every comma and semicolon. I have no doubt that some changes would be useful. If the amendments proposed in this bill were truly modest, I would have much less to say today.

But let's look at these amendments, and see whether they are consistent with the object and purpose of the ABM Treaty. They would increase the number of ABM sites and ABM interceptors permitted; allow space-based ABM battle management sensors; and increase flexibility for advanced technology ABM testing.

This proposed approach would undermine the ABM Treaty in several ways. First, by permitting multiple ABM sites all around the country, the bill would gut the ABM Treaty's carefully constructed protections against rapid breakout—a critical point.

The ABM Treaty strictly limited the number of ABM sites and ABM radars, because these were the long lead-time items of a comprehensive nationwide missile defense. With a nationwide deployment such as this, either side would have the potential to rapidly deploy hundreds or thousands of additional interceptors, undermining the other's deterrent. It was the United States that insisted on these provisions, to ensure that the treaty would adequately protect U.S. security. Yet the amendments called for in this bill would lift these limits.

Second, the bill's proposed amendments would permit space-based battle management sensors as well. These could potentially carry out all the same jobs as ground-based radars could—which is exactly why the United States demanded that they be banned in the original ABM negotiation. One expert has testified that Soviet space-based battle managers "would be the functional equivalent of many Krasnoyarsk radars in the sky." The sensors to be permitted under this bill could guide Earth-based interceptors, which might then be rapidly deployed; they could provide cueing to Soviet air defense interceptors, increasing worries over their possible ABM potential; they could, in short, greatly complicate the job of ensuring the continuing effectiveness of the U.S. deterrent.

Third, the bill would give the Senate's imprimatur to seeking increased flexibility for advanced technology ABM testing. With an administration still dedicated to both the discredited broad interpretation and the misguided Brilliant Pebbles Program, we all know what that would mean: United States negotiators would go to the Soviets and say, "even the Senate demands that you let us test ABM weapons in space." And as we all learned from the extensive interpretation debates of past years, the ABM Treaty's limits on space-based testing are another fundamental part of its protection against rapid Soviet Breakout.

Finally, I would say that we would put the Senate on record as demanding fundamental amendments, but without restraining the administration from going even further. We would, in effect, be giving the administration a license to kill the ABM Treaty.

DANGER THREE: UNDERMINE OFFENSIVE ARMS REDUCTIONS

This week, we celebrate President Bush's signing of the START arms reductions treaty, after 9 years of arduous negotiations. The ABM Treaty's limits on the defenses that offensive forces must overcome was and is the fundamental foundation for START, and for deeper offensive arms reductions in the future. The legislation we are debating today, however, could greatly complicate the final implementation of START and dash hopes for deeper cuts. The questions that must be asked are: Is the Soviet Union likely to reject these proposed amendments? And if such amendments are accepted, what does that mean for future offensive arms reductions?

To date, the Soviet Union has rejected all such proposals to rewrite the ABM Treaty, and it seems virtually certain to reject this one. As Gorbachev once put it, "we will never agree to helping with our own hands to wreck the ABM Treaty. For us, this is a matter of principle, of our national security." Given the overwhelming economic difficulties the Soviet Union faces, it is hard to imagine the Soviet leadership being enthusiastic about amending the treaty to permit them to spend tens of billions on new ABM deployments.

What happens if the Soviets do reject these proposals? If we vote today to put the Senate on record as saying that fundamental treaty amendments are a basic goal of the United States, what will we do when the administration comes back in a few years and tells us that the Soviet negotiators say no, they still like the deal we struck in 1972? Having approved the goal of nationwide defenses, would the Senate then support U.S. abrogation of the ABM Treaty? Is that what the Senate wants to sign up to today?

Such a United States withdrawal from the ABM Treaty would be the death of START, and of the entire strategic arms control process. The Soviet Union has repeatedly made clear the United States violation of or withdrawal from the ABM Treaty could threaten Soviet supreme national interests, providing grounds for Soviet withdrawal from START—a statement the Soviets put forward today when they signed the treaty.

Thus, abandoning the ABM Treaty would deprive us of the substantial security benefits of START. Among other things, that would mean the number of Soviet missile warheads threatening the United States—even after subtracting those that might be intercepted by such a defense—would be significantly larger than it otherwise need be. Is that the purpose of building defenses?

Even if the Soviet Union accepted the proposed amendments, and START reductions continued—an unlikely outcome at best—this approach would likely dash hopes for deeper reductions. Both the United States and the Soviet Union have signed up to the goal of further stabilizing reductions in START II, and most of us in this Chamber support that goal. But START, for all its virtues, will still leave the superpowers with roughly as many weapons aimed at each as they had in 1982, when the START negotiations began.

But if the Soviet Union had a nationwide ABM system with hundreds of

interceptors—with the base for rapid expansion to a much larger system—does anyone here believe the Joint Chiefs and the SAC commander would support deeper cuts in United States offensive forces under START II? The fact is, the more defenses you permit, the more offensive overkill you will have to retain.

DANGER FOUR: A BUDGET BUSTER

Finally, this legislation could be a budget buster. Even the single 100 interceptor ABM site this bill initially authorizes would cost $11 billion, according to a 1989 Congressional Budget Office study. When was the last time we were asked to approve a brand new $11 billion military program, in a time of painful cutbacks in both military and civilian programs, with no hearings, no official reports on its cost, schedule, capabilities, or implications, and no request for it from either the President or the Pentagon?

But this bill explicitly describes that single site as only an initial step. If we approve this bill today, we are explicitly signing on a goal of nationwide defense against limited attacks, which many experts believe would require at least six ABM sites, armed with hundreds of interceptors. That, in essence, is the ground-based leg of the global defense concept the star wars office is putting forward. According to the Congressional Budget Office, that defense would cost as much as $66 billion—$36 billion in acquisition costs, $8 billion in operating costs, and another $22 billion to reflect standard cost overruns in a system of this magnitude and complexity; $66 billion and not a single hearing?

A RUSH TO JUDGMENT

Mr. President, this bill represents a rush to judgment. I am concerned by the absence in this bill of any criteria for judging whether a particular ABM system is suitable for deployment. When the Senator from Georgia put forward his ALPS proposal several years ago, he set forth criteria that such a system would have to meet before it should be built. He indicated that such a system should fall within the limits of the ABM Treaty "or, at most, require a modest amendment." But there is nothing whatsoever in this bill that would enforce that criterion. The word "modest" never appears.

Senator NUNN also said the system should be small enough so as not to "combine with offensive forces, either with or without a START treaty, to pose a first-strike threat," so that it would "not be destabilizing or prompt the Soviet Union to avoid or abrogate START." I doubt the proposals before us today meet this criterion either. There has been no detailed examination of the point, and again, there is nothing in this bill that would require defenses to meet these criteria.

There is also the question of the so-called Nitze criteria, whereby defenses must be cost-effective and survivable. Senator NUNN suggested that his initial proposal ought to meet the Nitze criteria. Right now, the law requires that any defenses to be deployed meet these criteria. Would the defenses proposed in this bill be cost-effective at the margin? Would a single ABM radar at Grand Forks be survivable? The fact is, we don't know. Nothing in this bill mentions it. Yet we are being asked to approve this approach without knowing—effectively flying blind.

Mr. President, in March of this year, when this body considered an earlier ABM proposal by the distinguished Senator from Virginia and a substitute by Senator NUNN, Senator COHEN made what I thought was an excellent point. He said that both measures were "premature." "No. 1," he said, "we had no hearings; not a witness has been called on either side. I think an issue of this magnitude at least warrants and merits that kind of thoughtful consideration. * * * We ought to hold hearings, call witnesses, ask General Scowcroft and others to submit a lengthy examination of the complex issues involved, and then I think we would be prepared to go forward. But until that time arrives, I think it would be premature to consider either amendment, and both ought to be rejected if they are not withdrawn."

Senator NUNN agreed, saying: "The Senator from Maine is correct when he said we need more time to deliberate on this issue. That point, I think, is pretty clear to everyone." He described WARNER's proposal as a serious amendment that deserved serious consideration. He predicted it would take "a lot of hearings." "There are all sorts of questions," he said, "that we would have to get answers for from our military and intelligence, whether the Soviets may be prepared to move out more readily than we are."

Mr. President, all of those wise words could be said of this proposal today. We have still had no hearings. To my knowledge, we have still gotten no answers to any of those myriad questions. We have still not heard from General Scowcroft or from anyone else in the administration. The basic question I raise is whether we want, today, without benefit of hearings, administration reports or testimony, to put the Senate of the United States on record to deploy an ABM system and to support fundamental amendments to the ABM Treaty. I believe the answer is "no."

The PRESIDING OFFICER. The yeas and nays have been ordered. All time has expired.

The question is on agreeing to the amendment of the Senator from Michigan. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR], is absent because of illness.

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 170 Leg.]

YEAS—99

| | | |
|---|---|---|
| Adams | Ford | Metzenbaum |
| Akaka | Fowler | Mikulski |
| Baucus | Garn | Mitchell |
| Bentsen | Glenn | Moynihan |
| Biden | Gore | Murkowski |
| Bingaman | Gorton | Nickles |
| Bond | Graham | Nunn |
| Boren | Gramm | Packwood |
| Bradley | Grassley | Pell |
| Breaux | Harkin | Pressler |
| Brown | Hatch | Reid |
| Bryan | Hatfield | Riegle |
| Bumpers | Heflin | Robb |
| Burdick | Helms | Rockefeller |
| Burns | Hollings | Roth |
| Byrd | Inouye | Rudman |
| Chafee | Jeffords | Sanford |
| Coats | Johnston | Sarbanes |
| Cochran | Kassebaum | Sasser |
| Cohen | Kasten | Seymour |
| Conrad | Kennedy | Shelby |
| Craig | Kerrey | Simon |
| Cranston | Kerry | Simpson |
| D'Amato | Kohl | Smith |
| Danforth | Lautenberg | Specter |
| Daschle | Leahy | Stevens |
| DeConcini | Levin | Symms |
| Dixon | Lieberman | Thurmond |
| Dodd | Lott | Wallop |
| Dole | Lugar | Warner |
| Domenici | Mack | Wellstone |
| Durenberger | McCain | Wirth |
| Exon | McConnell | Wofford |

NAYS—0

NOT VOTING—1

Pryor

So, the amendment (No. 979) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, it is my hope that we can now proceed to the Harkin—I believe Senator SIMON is coauthor of that amendment—to the Harkin-Simon amendment on which there is a time agreement. There is a second Harkin amendment.

I hope we could perhaps debate both of these amendments and then have two rollcall votes back to back on these two amendments. I think the best thing to do is to proceed, and we will see what we can do as we go a little further along.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I understand on this amendment we have 1 hour equally divided?

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 980

(Purpose: To reduce the authorization of appropriations for fiscal year 1992 for the strategic defense initiative)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, Mr. SIMON, and Mr. BUMPERS, proposes an amendment numbered 980.

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

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

The amendment is as follows:

On page 31, line 25, strike out "10,653,478,000" and insert in lieu thereof "9,253,478,000".

On page 40, line 13, strike out "$4,600,000,000" and insert in lieu thereof "$3,200,000,000".

On page 40, line 17, strike out "$1,550,530,000" and insert in lieu thereof "$700,000,000".

On page 41, line 1, strike out "not more than $625,383,000" and insert in lieu thereof "no funds".

On page 41, line 5, strike out "$744,609,000" and insert in lieu thereof "$820,522,000".

Mr. HARKIN. Mr. President, on behalf of myself, Senator SIMON and Senator BUMPERS, the amendment I have offered would set star wars funding at $3.2 billion for 1992. This is not a decrease in SDI funding, as some opponents of the amendment might imply. This funding level represents an inflationary increase for fiscal year 1991 level for SDI including the Theater Missile Defense Program.

Once gain, there are those who keep reminding us of the dangerous world we live in and the threats to our national security and the need to develop star wars to protect us from missiles from afar. I understand as well as anybody the nuclear world and the dangerous world we live in and how that affects our national security. There are stockpiles of nuclear-armed missiles on both sides of the globe that can blow the world up many times over.

It seems odd to me as we have just signed the START Treaty that we increase funding for a program that is designed to bust the ABM Treaty. It seems like someone is keeping two sets of books here. In one book, we have a world in which the cold war is over, the Berlin Wall is down, the Soviet Union is worrying more about bread than bombs, and the Warsaw Pact has dissolved. As we stand here today, the START Treaty has just been signed, democracies are flourishing all over the world and the threats to our national security are more internal than they are external. That is one set of books.

The same people who preach this book look at another book and say, yes, the Soviet Union is crumbling, there is no more Warsaw Pact, democracy is taking the place of communism but we need to keep pumping more and more money into star wars because the threat is growing faster than ever. Forget about the fact that star wars is already the largest research and development program in the history of mankind, dwarfing even the Manhattan project. Forget about the fact, Mr. President, that we spent more on military research in the last 31 months than we have on all biomedical research since the turn of the century.

I want to repeat that for emphasis sake. In the last 31 months, we have spent more on military research than we have on all biomedical research since the turn of the century. That is cancer research, heart research, Alzheimer's research, polio research, AIDS research, arthritis research. Lump them all together and go back to 1900: we spent less than what we have in military research in the last 31 months.

We are told time and time again we need more for star wars.

This amendment is about choices. It is simply this choice: Do we continue to increase funding for star wars and refuel the cold war, or do we choose post cold war fiscal responsibility and vote for a substantial reduction in the Federal deficit? That is what this amendment is about.

This amendment would reduce the defense bill star wars budget for fiscal year 1992 by $1.4 billion. All of these savings would go for deficit reduction. Assuming 50 percent outlays during the first year, this amendment would reduce the Federal deficit by $700 million next year. These are not small potatoes we are talking about; a $700 million reduction in Federal deficit next year would start us on the right track.

Again, I prefer that some of these savings go to some of our domestic needs like education, cancer research. Because of that budget agreement, we cannot. We must use it for deficit reduction.

I think it is important to point out that we have the President wanting this huge increase in the star wars funding, and at the same time, let me read some of the cuts the President made in his request to Congress: Veterans employment service, cut $38.7 million; targeted jobs tax credit, cut $19.5 million, community services employment for older Americans, cut $47 million; that is in Labor.

How about Health and Human Services? LIHEAP, so elderly people can keep warm in the wintertime, cut $490 million. That is what the President wanted. Health professions training, to train our health professionals to keep our people healthy, a $173 million cut by the President.

Let us look at education. The President wants to cut the supplemental education opportunity grants by $173 million; cut college work-study by $198 million; cut impact aid by $160 million; cut chapter 1 handicapped programs by $23 million; cut funding for libraries by $107 million.

These are major program cuts that the President sent down to the Congress on the one hand. On the other hand, he sends down a bill requesting a huge increase for star wars funding.

Now what I have said in my amendment is basically give star wars an inflationary increase. Is that so outlandish?

Let us look what we have done in the Department of Labor. A 3.9-percent increase in the Department of Labor in the appropriations bill we are about to bring on the floor of the Senate. Department of Health and Human Services received a 3.3-percent increase; health service research cut by $20 million. These are the kinds of cuts that we are facing when we try to invest in our human infrastructure in this country to make our people the smartest, healthiest, most productive workers anywhere in the world, and we are saying no, we cannot do it. But, on the other hand, we can pour a lot of money into star wars.

I think it is time to say enough is enough. We do not need this huge increase in star wars. I might add that this amendment that I am offering leaves full funding in the theater missile defense system.

Mr. President, I ask unanimous consent to print in the RECORD a table showing SDI funding levels.

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

SDI FUNDING LEVELS

[In millions of dollars]

| | Fiscal year | | House | SASC | Harkin/Simon | |
|---|---|---|---|---|---|---|
| | 1991 | 1992 request | | | Amount | Percent [1] |
| Limited defense system | 392 | 674 | 840 | 1,551 | 700 | +78 |
| Space-based interceptors: (Phase I) (Brilliant Pebbles) | 866 | 1,612 | 0 | 625 | 0 | ..... |
| Follow-on research | 696 | 925 | 820 | 745 | 821 | +18 |
| Research and support | 727 | 1,081 | 996 | 822 | 822 | +13 |

SDI FUNDING LEVELS—Continued

[In millions of dollars]

| | Fiscal year | | House | SASC | Harkin/Simon | |
|---|---|---|---|---|---|---|
| | 1991 | 1992 request | | | Amount | Percent [1] |
| Theater defense: (Patriot, et cetera) | 398 | 857 | 857 | 857 | 857 | +115 |
| Total SDI | 3,079 | 5,150 | 3,513 | 4,600 | 3,200 | +3.9 |

[1] Percentage increases relative to fiscal year 1991.

Mr. HARKIN. Mr. President, let me point out that theater defense is left with a 115-percent increase under our amendment. Research and support still gets a 13-percent increase. Follow-on research, 18-percent increase; limited defense system gets 78 percent. What we have done is take it basically out of the space-based interceptors; Phase I Brilliant Pebbles is down to zero.

SDI, under our amendment, would get a 3.9-percent increase, an inflationary increase just like we give to the Department of Health and Human Services, just like we give to the Department of Labor, and just like we give to the Department of Education. I think an inflationary increase for star wars is plenty, especially when we have kept the theater defense missile system for upgrading Patriots or other forms of missiles for limited warfare. This is where we ought to be putting our research, and we kept it in the amendment. What we have cut out is basically the space-based programs.

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

The PRESIDING OFFICER (Mr. ROBB). Who yields time?

Mr. NUNN. Mr. President, I yield 5 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 5 minutes.

Mr. BOND. Mr. President, I thank the committee chairman, and I thank my colleagues for the opportunity to make some brief comments on this amendment. I think it is very significant that this body has already voted 60 to 39 to approve the committee approach to SDI. I especially want to commend the Senator from Georgia for his leadership in being the first one to propound the idea of an accidental launch protection system.

Certainly our ranking member, the Senator from Virginia, has, with his great leadership, also brought us to the point where we now have a bipartisan consensus as to how we should move forward.

The Senator from Wyoming, Senator WALLOP, has long carried this battle, and I think the time has come for us to assure that we go forward on a sound program.

This amendment before us essentially would cut back on a program which a majority of the American people feel is vitally important. I do not know how anyone who watched the Persian Gulf war on television and saw the tremendous fear in the people of Israel as they watched and they waited each night for the possible incoming Scuds, hoping and praying that the Patriots would work, can say that the time is not here for us to develop a system to protect our civilian populations against the possible use of missiles that are either launched by a terrorist nation or even accidentally launched by a major country such as the Soviet Union.

It is with some satisfaction that I come to the floor today to speak on this important issue. For 4 years now I have been coming to the floor today to speak about the need for the deployment of a ground-based, limited-missile, protection system. Twice in past sessions I have offered amendments to the bill which would have allowed us to take the first steps toward those goals. Both times we failed, although I would note by a smaller margin each time.

This year the committee has developed a well thought out, bipartisan approach which would include the system for which we have been calling. Although I would have preferred that we could have done it sooner, I think the adage "better late than never" is appropriate, and I commend the committee for developing a sound rationale for moving forward.

I urge my colleagues to oppose this amendment and any amendments that would take away from our ability to defend against missiles from terrorists, from Third World countries or accidentally launched.

Under the committee's plan, work would begin immediately toward development of an ABM Treaty compatible antimissile system at Grand Forks, ND. Unlike the focus of amendments previously debated, this would have the potential of protecting the citizens of the United States against the threat of a Third World terrorist or accidental launch. At the same time, we would begin looking at the possibility of deploying a nationwide ground-based system and we would continue research into other promising systems such as the space-based or Brilliant Pebbles system to defend against missile launches.

Mr. President, the American people want to be protected against the possibility of a nuclear attack or accident. Survey after survey has shown that people throughout the Nation want to see the system deployed. I can tell my colleagues firsthand the people in my State not only want but they expect that we can be protected against missiles launched by other countries.

I have often asked people in coffee shops and in gatherings around my State what do you think we would do if there was an accidental launch of a missile against us or if a group of terrorists or a Saddam Hussein launched a missile against us? Everybody tells me, well, we would shoot it down, of course. When I tell them that we do not have the means to do that, they are shocked.

After watching the dozens of missile attacks on Israel and Saudi Arabia during the gulf war, Americans have a right to be and are even more concerned about our lack of any defense. They are anxious to see a system deployed. The truth of our vulnerability was displayed night after night in their living rooms and it drove home the urgent need to act.

The Soviets have had a system that is capable of defending their population, a system around Moscow, and over the years they have been upgrading it and making it more effective. If someone, such as a terrorist nation, managed to launch a ballistic missile against Moscow this afternoon, the Soviets would have the capability to shoot it down.

We have the capability to develop and deploy a system and the committee allows us to begin work to do so, but we do not have it now.

The components for the system either exist or are at an advanced stage of research and development. We have interceptors capable of intercepting missiles both in the atmosphere and outside it. A combination of these systems will give us a layered defense which will provide added protection against possible attack.

There are many reasons for deploying a missile protection system, but the gulf war brought home one of the most important—the industrial nations of the world no longer have a monopoly on advanced missile technology, and it is only a matter of time until we lose our control over nuclear weapons and missile technology.

The proliferation of ballistic missile technology is an issue that ought to concern all of us as well as the leaders of all peace-loving nations. The worldwide scrabble to develop, borrow, beg, or steal the technology needed to build ballistic missiles is truly frightening. The CIA has estimated that by the year 2000 at least 15 developing countries will either have produced or will

be able to produce their own ballistic missiles. Ballistic missiles are already deployed in almost a dozen developing countries including several that are hostile to the United States. Our experience in the gulf war with Saddam Hussein's Scuds is only the tip of the iceberg and it gives us a glimpse of what we will have to face a few years from now.

Given what we have seen, it is certainly not unreasonable to hypothesize that a nation, or even a terrorist organization, could get its hands on both a ballistic missile and a nuclear warhead. A situation which, if it arose now, would leave the United States helpless—totally unable to defend ourselves. An even more likely possible threat is that one of these countries would threaten the United States with a chemical or biological weapon.

A modest missile protection system like the one envisioned in the legislation before us would free us from the possibility of being held hostage by those countries. From my point of view, this alone is reason enough to deploy a system.

But there are other reasons beyond the Third World threat. There is the very real danger with the violence that continues to plague Soviet republics that a weapon could fall into the hands of a dissident group. Also, there is the ongoing threat of an accidental or unauthorized launch of a Soviet or Chinese missile. Further, a ground-based system would provide us with operational experience with antimissile systems at a relatively low cost. Such experience would prove invaluable in future debates over whether to proceed with upgrades.

We all watched in amazement and horror as correspondents on the rooftops in Riyad and Tel Aviv reported incoming Scuds that could have been tipped with chemical weapons. We know that the Third World intercontinental missile threat is real and may be realized soon. Just imagine the horror we would feel if those correspondents were standing on rooftops in St. Louis, Kansas City, or some city in your State and we did not have even a limited system to take out a missile strike.

The amendment before us would gut the package that has been crafted by the committee and would derail this effort to begin deployment of this long-overdue system. It would be a mistake to delay any further. I hope that the majority of my colleagues will agree with a majority of the American people that it is time we had a missile defense system and vote against this amendment.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Iowa [Mr. HARKIN].

Mr. HARKIN. I am about to yield time to the Senator from Illinois. I listended to the Senator from Missouri, my friend and colleague from south of Iowa. He obviously did not read my amendment. I do not know what he is talking about, but he has not read my amendment. The very things he is talking about—protecting against Scud missiles—is left in my amendment, a 115-percent increase for research for the very thing that he talked about.

So, evidently, the Senator is talking about some other amendment and not talking about my amendment.

He talked about an accidental launch. Again I think the distinguished chairman of the committee has talked about this before. We need some international agreements to put explosive, self-destruct mechanisms on those missiles so if there is an accidental launch, someone could blow it up.

Third, on launching a missile, he talked about the Soviets having this ring of missiles around Moscow. I say to the Senator it did not stop that little Cessna aircraft, flown by that young kid, that landed right in Red Square. If you want to blow up the Kremlin with an atomic bomb, that is the way they are going to do it, not with a missile launch.

So, again, I respond to the Senator from Missouri, I hope he reads my amendment and understands it. And on the issue of continuing the research for theater missile defense such as the Patriot that we used in the gulf war, that is left in our amendment at the exact level that the President requested and the level that the committee recommended. It is the same level that is in our amendment.

With that, I yield 5 minutes to the distinguished Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois [Mr. SIMON] is recognized for up to 5 minutes.

Mr. SIMON. Mr. President, I am pleased to be a cosponsor of this amendment. I think we recognize we are going to have to show some restraint around here. We just cannot do everything we would like to do.

If I can digress—and I may be very lonely in this opinion—I am going to be voting for the extension of the unemployment compensation but, frankly, I had an amendment prepared, a sense-of-the-Senate amendment, prior to the House action that asked for doing it on a pay-as-you-go basis. We just cannot do everything we want to do around here unless we are willing to pay for it.

In one of the areas we have to show greater restraint is the area of defense spending.

I ask unanimous consent, Mr. President, to print in the RECORD a statement in the New York Times of Monday by the distinguished chairman of the Budget Committee. The heading on it is, "The Budget Follies Have to Stop." The subheading is, "Start Cutting the Military Budget Now."

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

[From the New York Times, July 29, 1991]

THE BUDGET FOLLIES HAVE TO STOP

(By Jim Sasser)

WASHINGTON.—The conventional wisdom holds that the 1990 budget agreement will last until shortly after the 1992 election, when campaign promises can be safely forgotten and we must face deficits that have deepened beyond expectations. Until then, we are supposed to be on automatic pilot.

Yet the Congressional Budget Office confirmed last week that we can't achieve the planned $480 billion deficit reduction over five years without further paring. We must begin that paring far in advance of fiscal 1993.

This week, as the Senate debates the Defense Department's fiscal 1992 budget request—including about 100 major weapons-acquisition programs that could total more than $500 billion—we can't keep acting as if the tough choices have already been made.

The Budget Enforcement Act of 1990 produces much of its savings by imposing caps, through fiscal 1993, on domestic, international and defense spending—the three component parts of the so-called discretionary budget. Until then, we need only exercise restraint. Afterward, these limits yield to a single cap on discretionary spending as a whole for fiscal 1994 and 1995, and here aggressive austerity must replace passive restraint.

The Budget Office estimates that if the three parts grow with inflation beyond their projected 1993 level, they will, taken together, exceed the overall limits for 1994 and 1995 by substantial amounts. Even taking into account the planned decline in military spending for both years, we must further cut discretionary spending by $14 billion in 1994 and about $22 billion in 1995—no easy matter.

The Administration and Congress, which must start building budgetary ships in evertinier bottles, are doing just the reverse. The House and Senate have fully financed the space station rather than end that expense, which will be $2 billion in fiscal 1992. If we keep pouring money into the $30 billion station, we'll doom other necessary space-science projects to extinction.

Similarly, the Superconducting Supercollider will grow from $535 million in fiscal 1992 to its overall price tag of about $11 billion. Sustaining this program would relegate smaller-science programs, the heart of America's technological capability, to a budgetary no man's land.

If we can't cut domestic programs, it will be extraordinarily difficult to cut defense, unless we start today. The Budget Office says that if we wait to make decisions until 1994, when the spending caps descend, the Pentagon would face the prospect of cutting 425,000 people in the military beyond the 233,000 who are to go between 1993 and 1995. We would be limited to personnel reductions because cuts in big weapon systems don't have an immediate impact on the budget.

Despite the squeeze on other military spending, we persist with our plan to sink $20 billion into "Star Wars" over the next three years, $16 billion into the B–2, $10 billion into the Aegis class destroyer, $7.1 billion into the F–22 advanced tactical fighter and $12.2 billion into the C–17 transport.

Something's got to give, and these systems are a good place to start. The big-ticket procurement bill for the next three years totals more than $85 billion. We could slide under

the 1994 and 1995 spending limits if we cut that tab by just one-third.

We should seek cuts in domestic programs, too. But the larger point is that we can't have every high-dollar high-tech toy we fancy. We have a timely opportunity to make military and domestic choices that threaten neither national security nor our well-being.

If we wait for a politically convenient post-election moment, we'll limit our opportunities and perhaps destroy our last chance to bring the deficit under control.

Mr. SIMON. Then I ask unanimous consent to print in the RECORD from today's New York Times, a column by Tom Wicker titled, "Big Ticket Blues."

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

BIG TICKET BLUES

(By Tom Wicker)

Many an American is happy that the cold war is over and the astronomical cost of the military must therefore be coming down. Many others are unhappy to discover that their states and municipalities no longer have the money to pay for libraries, schools, parks, public services and other accustomed amenities.

Both kinds of Americans may be shocked to discover that by the reckoning of the chairman of the Senate Budget Committee, the Pentagon still is seeking more than $500 billion of taxpayers' money for "about 100 major weapons acquisitions programs." Targets for these weapons seem mostly to be in the eyes of their supporters.

Nor is it only the military that wants a lot of high-priced hardware to play with. Both House and Senate have agreed to throw away $2 billion in fiscal 1992 on the space station; ultimately, it will cost a nation that can't provide decent health care for millions of citizens the grandiose total of $30 billion. That may not count the $4 billion already down the drain, and surely doesn't include the expectable cost overruns or the design changes necessary to make this turkey fly, if it ever does.

As for the Superconducting Supercollider—or is it the Supercolliding Superconducter?—this monstrosity will bleed taxpayers by only $535 million in FY 92 (cigarette money in the hardware league) but $11 billion before it either supercollides or superconducts, whichever comes first.

Is opposition to these boondoggles anti-science? Not at all. Jim Sasser of Tennessee, the aforementioned Budget Committee chairman, pointed out in an Op-Ed article for this newspaper that paying for the space station would "doom other necessary space-science projects to extinction." He was too charitable to report that many scientists consider the space station a man-made black hole, down which to pour taxpayers' money.

The supercollider, Mr. Sasser wrote, "would relegate smaller-science programs, the heart of America's technological capability, to a budgetary no man's land." But members of Congress apparently never met a big-ticket item they didn't love.

The military, of course, continues to be the biggest feeder at the technological trough. Here is Mr. Sasser's partial list of Pentagon phantasmagoria:

Star Wars: Despite a General Accounting Office report that the $24 billion already invested in this pipe dream has resulted in $3 billion wasted on poor planning and unproven technologies but very little usable weaponry, the outlook is for $20 billion more to be blown into the blue sky over the next three years.

Not content with this profligacy, the Senate Armed Services Committee now proposes to spend about $10 billion on the deployment of 100 ground-based antimissile missiles—a money-guzzling nightmare rejected as far back as the Nixon Administration and for the resurrection of which no one can offer a coherent rationale except to make Democrats look hardnosed. But who could believe that?

The B–2 bomber: Someone ought to be able to say why we need this bomb at this price, about $16 billion. That would rebuild—if Congress must have hardware—a lot of highways and bridges.

The Aegis: Here's a real budget destroyer, a high-tech naval ripoff flying a $10 billion price tag at its foretop.

The F–22 tactical fighter: For $7.1 billion, will we get an advanced version of "Top Gun," starring Tom Cruise, maybe called "Son of a Gun"? Or will Mr. Cruise's career be finished before the F–22?

The C–17 military transport: $17 billion for this oversized beauty, which will make it easier to carry U.S. troops here and there, to police up those little wars that may be part of the New World Order.

Mr. Sasser is primarily concerned to reduce the Federal deficit. But cutting some or all of a projected big-ticket outlay that he estimated at more than $85 billion over the next three years is necessary, also, for the reason advanced by Bob Traxler of Michigan, the chairman of a House subcommittee that boldly but vainly tried to jettison the space station.

"We simply can no longer afford," said Mr. Traxler, "huge new projects, with huge price tags, while trying to maintain services that the American people expect."

But don't hold your breath until he and Mr. Sasser get their way.

Mr. SIMON. I think the fundamental question we have to ask is, what is the great security threat to our country and where should we be spending money or not spending money?

I suggest, if we were to be in Japan or some other country, or someone on Mars who looked down here, the two great security threats to our country are, No. 1, our failure to get a hold of our economy. We are simply year after year after year—and both parties share the blame—spending much more than we are taking in. That is, in my opinion, the No. 1 threat to the future of this country.

This amendment, in a small way, deals with that. It says, let us cut this back $1.2 billion and save $700 million in this fiscal year. Any public opinion poll shows that the public recognizes what the economists recognize, which is that the No. 1 threat to the future of our country is failure to face up to our fiscal year problems. This is a small, infinitely small way to do it. But let us do it.

The second thing we ought to be doing is paying attention to education much more than we are. In fiscal year 1949, we spent 9 percent of the Federal budget on education. Today, we are spending 3 percent.

Just the other day in the committee in which Senator COCHRAN and I serve—I see him on the floor here—we had a witness who pointed out that, in 1969, the Federal Government funded 60,000 graduate fellowships. Do you know how many we are funding this year? We are funding 12,000. I cannot measure what that is going to do to our ability in the field of science and everything else, to do what we ought to do as a nation, but I view that as a fundamental security threat to this country.

The amendment that Senator HARKIN has proposed—and I am pleased to cosponsor it, along with Senator BUMPERS—basically says: Let us give SDI the 3.9-percent increase that we give the Department of Labor and other Departments of Government—no more, no less. That seems to me to be reasonable. It is an amendment that just says, in view of the dramatically changing international scene, let us not waste billions of dollars needlessly; let us slow down our spending a little so that we see what is going on.

I think that makes sense, Mr. President. I am pleased to be a cosponsor of this amendment, and I hope we will have the good judgment to agree.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I would be glad to accommodate the authors of the amendment.

I ask the Senator from Iowa a question as to his preferences. Are we going to have two Harkin amendments? Are we going to have the other Harkin amendment, also?

Mr. HARKIN. It is my intent, yes, to offer my second amendment.

Mr. NUNN. Since so many of our colleagues are in committee meetings and other places, I would like to see if we can conclude debate on both of the amendments and vote on both in sequence. Is that possible?

Mr. HARKIN. I have no problem. As long as it is fine with the chairman, it is fine with me.

Mr. NUNN. How much more time will the Senators need on the first Harkin amendment? I can make my response brief, and I think the Senator from Wyoming will do likewise.

Mr. HARKIN. Senator WELLSTONE and Senator ADAMS wish to speak. I have to consult with them about how much time they want.

Mr. NUNN. I will withhold my remarks until the Senator completes.

Mr. WALLOP. Will the Senator yield for a unanimous-consent request?

Mr. HARKIN. Yes.

Mr. WALLOP. I ask unanimous consent that Mr. Gibson LeBoeuf of my staff be allowed floor privileges during the pendency of S. 1507, the Defense Department authorization bill.

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

Mr. HARKIN. Mr. President, I yield 5 minutes to the Senator from Minnesota [Mr. WELLSTONE].

Mr. WELLSTONE. Mr. President, I rise in support of the amendment offered by Senators HARKIN, SIMON, and BUMPERS to trim the SDI budget.

Last night, we had the debate about the policy aspect of the star wars or antiballistic missile program. Let me speak about the financial aspect—this budget authorization of $4.6 billion. I was presiding in the Chair the other day, and I heard two Senators having a colloquy with one another. They were talking about an exchange program that we should have with Eastern Europe, so that young high school students can come to our country and learn about democracy and learn about pluralism, all of which I think is wonderful. As my memory tells me, one of the Senators explained, the program's purpose was "* * * so that they can learn about all the opportunities that exist in our country."

I was sitting up there in the Chair presiding, and I thought to myself that 10 blocks from this Capitol, there are many, many young people who do not have many opportunities. They are waiting to have the opportunities to which that Senator referred.

Can we invest in the education of young people? We are told we do not have enough money. Those young people do not have all the lobbyists and the people with the power to be here. We can feed the insatiable appetites of the military contractors. We will not cut this program just a little bit. But we cannot feed the hungry mouths of children, and we cannot deal with the appetite of young people to learn.

Do we have the money to house homeless people? There are many people in the galleries here today. Perhaps many of you have seen the people sleeping out on the ground. I know that when I run early in the morning, and run down by the Lincoln Memorial, I see it all the time. I saw it in the dead of winter. We do not have enough money for housing for those people.

Can we make sure that every woman expecting a child has a diet rich in vitamins, minerals, and protein, so that their children-to-be will have the same chance we have? No, we do not have the money. Can we fully fund a Head Start Program so that children will truly have a head start? No, we do not have the money. Can we make sure that we can provide affordable, available, dignified health care for our citizens? No, we do not have the money. Can we invest in rural communities and make sure small businesses can make a go of it, and make sure that family farmers have a decent price for their product? Can we provide for affordable child care? No, we do not have the money.

Mr. President, this raises a very interesting question. I believe that my colleagues who do not want to cut even a little bit in this antiballistic missile program, potential star wars program—to use a Yiddish proverb—want to "dance at two weddings at the same time."

We want to reduce the deficit. Are we doing so? No. The figure we look at now is $350 billion.

I say to the Senator from Iowa, who comes from a farm State, that the farmers in Minnesota say "You plant your seed corn, you do not eat it up." But the interest is eating it up.

We cannot invest in ourselves. We are not reducing the deficit. We are not investing in people. We are not investing in our future. But we have more and more money for more and more of these military programs. Almost $300 billion in the military budget. It is very interesting.

What I want to say on the floor today is that if we cannot effect even a slight cut in this program, where are we going to cut? Are we ever going to get serious and realize we cannot have space stations and super colliders, and this and that military program? We get all those programs; you bet we do. Because they have people to lobby for them, people who have power; they have the people who come to Washington and have representation, but not a whole bunch of other citizens.

I want to say by way of conclusion, Mr. President, to my colleagues—many of whom I respect—on the other side, that someday in the United States of America, we are going to realize that real national security is the security of our local communities, where people have jobs, and people are provided with decent health care, and we support rural communities and urban communities, and where there is decent transportation and decent housing, and generous care for the aged, and where there is an educational system second to none, so that every boy and girl can grow up dreaming of being President of the United States. Until we understand that is our future, and that real strength begins at home, we are going to be in a lot of trouble.

What are we getting for our billions of dollars going to SDI? What is the dire threat to our security that demands such a significant portion of our national resources?

According to the Armed Services Committee, the proposed military system is intended to protect against an accidental launch of Soviet ballistic missiles or a limited missile attack by some other country.

This is possibly the weakest rationale yet presented for accelerating the SDI Program in a long line of feeble and foolish rationales. First of all, these are remote contingencies. Second of all, these contingencies could be addressed more efficiently, more directly, and far more cheaply, by means other than an antimissile system.

No Third World country except China even has missiles that can reach the United States. Both India and Brazil have been trying to develop ballistic missiles for over a decade. Neither has been successful and both have constructed easily detectable infrastructures in the process.

If Third World and terrorist weapons of mass destruction do emerge as a threat to the United States, they will not be delivered by ballistic missiles. They will be carried by aircraft, on ships sailed into our harbors, or packing crates smuggled across our borders.

The proliferation of ballistic missiles and nuclear weapons technology is indeed a major problem. I have been among those who have long urged the United States to develop a vigorous and credible nuclear nonproliferation policy. This does not require billions of dollars. It requires political will.

Mr. President, if the United States were really serious about stopping nuclear proliferation, it would demand that states adhere to the nuclear nonproliferation treaty.

If the United States were really serious about stopping nuclear proliferation, it would demand that recipients of U.S. military aid accept full-scope safeguards as a condition on both the sale and purchase of nuclear technology.

If the United States were really serious about stopping nuclear proliferation, it would vigorously pursue a multilateral comprehensive nuclear test ban treaty and a global ban on the production of fissile materials for weapons.

Those are the sort of initiatives that the United States would pursue if it were serious about proliferation. Unfortunately, the Bush administration is not pursuing these initiatives.

As to limited threats from the Soviet Union, not one defense official has suggested that the risk of an accidental Soviet launch is high. America's top military adviser, Colin Powell, has testified that the Soviets have very good control over their systems.

Hypothetically, a mechanical failure could result in an accidental launch. There is no historical precedent for such an event and in fact, getting missiles to fire when they are supposed to is a greater problem. But however one evaluates the gravity of this potential problem, an appropriate response is to agree on safeguards and disabling mechanisms on missiles. Those are the steps we should be taking. Again, they do not require billions of dollars.

Mr. President, a decision to spend billions of dollars to deploy a thin defense system against so far-fetched a threat is an act of colossal folly. But that may not be the worst of it. If the Senate agrees today to send the United States down the path proposed by the Armed Services Committee, it may well torpedo the ABM Treaty, threaten

the newly signed START Treaty, and pump new life into the arms race.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. HARKIN. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator controls 9 minutes and 38 seconds.

Mr. HARKIN. I was going to yield to the Senator from Washington. He happens to be away from his desk right now. As soon as he gets back, I will yield to him.

Mr. NUNN. I will be glad to take a minute or two at this time.

Mr. President, I rise in opposition to the Harkin amendment, which would reduce the SDI funding level down to $3.2 billion. This level would be $1.5 billion below the administration request, and $300 million below the House-passed level.

The question is, What is wrong with being below the House level? The answer is the Senate is trying to deploy actual defenses to protect America against limited attack in its bill, and the House does not have any such deployment plan.

If we are going to be able to pay for the treaty compliant ABM system we are pursuing in the bill, we also are going to be supporting—and most Senators do support—the anti-tactical-ballistic-missile systems to help protect our forward deployed forces and our allies. We need a funding level that is responsive to these requirements, and that means a level higher than the House level.

It does us little good to announce a goal of deploying an ABM defense against a limited ballistic missile attack if we do not provide sufficient funds in the bill to move in a serious fashion toward that goal.

If we are not serious about deploying a treaty compliant ABM system, we have to ask the question, what do we want to do with these research dollars? What would we do with the $3.2 billion that would be in the bill if we have no such goal? What is the purpose? What would SDI do with the money? Are we going to continue to simply pour money in with no concept?

What would happen assuming all the technology works out and assuming everything researched works out? What do we want to do? If we want to do something, I think we ought to stick to the funding level in this bill. If we want to simply throw the money out, then we can do that, but we are not going to be getting anywhere.

So I hope our colleagues will oppose the Harkin amendment, Mr. President. We have had a lot of debate in this last 14, 15 hours on the floor of the Senate on SDI. I am not going to take a lot of time.

I hope, after we complete the debate on this first Harkin amendment and move to the second Harkin amendment, we can perhaps begin the votes on both of them somewhere before the hour of noon, if possible.

Mr. WALLOP. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER (Mr. HEFLIN). The Senator from Wyoming [Mr. WALLOP] is recognized for 2 minutes from the time of the Senator from Georgia.

Mr. WALLOP. Just briefly, I say several things to my friend from Minnesota. The compassion about the homeless, the education, the transportation, farmers, small businesses, is well spent. But, in fact, the defense budget is nearly 3 percent lower than it was a year ago. This is a reordering of priorities within the budget that is there; within the budget that is declining.

It seems to me that the Senator from Georgia has made the best point of all. If this body and if this Congress is unwilling ever to get to the point where it makes the decision to defend the American people with the knowledge and technology that it has, then even the amount of money that the Senator from Iowa proposes is a waste of money, and all of it ought to be terminated.

You are either going to do something with this and not toy with the American people about it, or tell them: The honest truth of it is that I have no care about defending it. I know that the technology of America exists to provide the defense to the American people. Senators know that the technology exists. So we are toying right now with the future of America; very simple. Do we use the technology that we have to advance the safety, or do we take it out of the defense budget in its entirety? That is really the question. A decline in the safety as the Senator from Iowa suggested is really a waste of the money.

Mr. President, I ask unanimous consent to have printed in the RECORD an essay by Charles Krauthammer and a letter dated June 5, 1991, from the Chairman of the Joint Chiefs of Staff to Senator WARNER.

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

[From Time magazine, Aug. 5, 1991]

WHY ARMS CONTROL IS OBSOLETE

(By Charles Krauthammer)

Remember the Freeze? Ground Zero Week? The Day After? Remember when psychiatrists were blaming the Bomb for everything from violence to video games? It was barely a decade ago that America was in the grip of nuclear hysteria. Yet when, in London, Presidents Gorbachev and Bush dramatically announced the conclusion of START, the most substantial arms treaty in history, they were met with yawns.

Why? Because in the interim, it has become clear to even the woolliest that nuclear weapons are not the threat. The threat is the intent to use them.

That is why even the worst nuclear hysterics never got terribly worked up about the British and the French arsenals, both of which were quite capable of laying waste to a very large part of the U.S. No one worried about them because the French and the British are friends. The problem with the Soviets was not that they had thousands of nuclear weapons, but that they had thousands of nuclear weapons pointed at the U.S. And since no arms-control regime ever seriously proposed reducing nuclear weapons below the level needed to wipe out American society at least once, no arms-control regime could ever, even in principle, cure our nuclear nightmare.

Arms control was always something between a sham and a sideshow. The end of the cold war has proved it. The U.S.S.R. today has thousands more nuclear warheads than it did 10 years ago. Yet we feel far more secure today. Why? Because security never depended on numbers. It depended on intentions. Soviet intentions have changed and the change had nothing at all to do with arms control.

Which is what makes START so irrelevant. Arms control is what you talk about when you have nothing to talk about. In the midst of the deepest cold war, the only thing we could possibly talk to the Soviets about was nuclear weapons: abstractions, tokens, numbers, weapons whose use was inconceivable. Arms control offered a kind of shadow substance when there was no real substance to discuss.

Now we have real substance—the terms of Soviet entry into the community of the West. That substance was symbolized in one picture: Gorbachev in London, smiling, surrounded by the seven Western summiteers. That picture mocked the Bolshevik dream of overthrowing Western capitalism. It illustrated the Soviets' desperate desire to join the West. And it made START obsolete because, at the end of the day, a democratic Russia integrated into the West becomes no more a nuclear threat to us than Britain or France.

But the end of the Soviet threat does not mean the end of nuclear danger. The real danger is proliferation, and proliferation has just begun. Within a decade, according to Defense Secretary Dick Cheney, 15 countries will acquire ballistic missiles. About half will have nuclear weapons on top of them. Moreover, Soviet leaders have been rational and thus deterrable. We went to the brink during the Cuban missile crisis but did not go over. Both sides understood and would not bear the cost of nuclear war. We cannot be so sure that will be true of Iraq, North Korea, Iran, Libya, the nuclear powers of the future.

That is why the signing of START comes just in time. With luck, START marks the end of that most sterile of exercises, superpower arms control. It may finally free our attention for the real threat: the ballistic missile brandished by the smaller, newer, angrier powers of the very near future.

What to do about the threat? First, preempt. The model is Iraq. Says British Foreign Secretary Douglas Hurd: "One way or another we are going to prevent Iraq becoming a nuclear power." Hurd is refreshingly unconcerned about the legalities or political niceties of a great power with nuclear weapons dictating to a smaller power without them that it must remain without. The danger is too great. Iraq is a proven aggressor with a record of using every weapon it ever laid its hands on. The U.S., Britain and France, at least, aim to see that it does not lay its hands on nukes, even if that means military attack.

But pre-emption is not enough. There will always be countries with programs clandes-

tine enough to escape detection. One day our children will wake up to some crazy state's nuclear arsenal. Let us hope that we will have provided for them.

How? With a defense. Hence the second requirement for the post-Soviet nuclear environment: the Strategic Defense Initiative. SDI, like arms control, was distorted and diverted by the Soviet threat. SDI never was and never will be an adequate response to a full Soviet attack. Ronald Reagan's pretense that it was did SDI great damage. Yet SDI remains vital. It is our only potential protection from nuclear attack by small countries or unauthorized launch from large ones (by a renegade Soviet general, for example).

These are undeterrable threats. And the primitive Scuds of the gulf war have given us a taste of how terrible they will be. Yet the Congress is locked in an archaic cold war debate over SDI's architecture. On the one side are those who insist on ground-based systems only. On the other are those who demand an additional layer of defense based in space.

It is hard to understand the theological objection to space-based defenses. The matter should be purely technical. If we can engineer an effective first line of defense in space, why not the extra protection? A few decades from now many nations will be in space, using it for defensive and perhaps even offensive purposes. Why forfeit the opportunity to be the first into an absolutely critical area of strategic power when the road is open and the need is great?

Nations are rarely given the opportunity to prepare in tranquillity for a looming threat. We must not sacrifice that opportunity to the theologies of arms control and cold war thinking. START is already obsolete. The cold war is quite dead. The danger is the proliferating ballistic missile. The answer is bold new thinking—and strategic defense.

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THE CHAIRMAN,
JOINT CHIEFS OF STAFF,
*Washington, DC, June 5, 1991.*

Hon. JOHN WARNER,
*Committee on Armed Services, U.S. Senate, Washington, DC.*

DEAR SENATOR WARNER: The refocused Strategic Defense Initiative (SDI) and the military requirement for ballistic missile defense have been subjects of considerable congressional interest. Consequently, I want to provide you the position of the Joint Chiefs of Staff on these important issues.

The Joint Chiefs of Staff fully support the President's decision refocusing SDI to provide global protection against limited strikes (GPALS). It is a clear and correct response to the threat posed by the proliferation of ballistic missiles. In Desert Storm, we vividly witnessed the impact ballistic missile defenses had in bolstering the coalition arrayed against Iraq. Today, 20 nations have ballistic missiles. In the not-too-distant future, there is the potential for very accurate missiles with mass destruction warheads to be available to numerous Third World nations. Ultimately, some of these missiles could have the capability of directly attacking the United States. Providing protection against limited ballistic missile attacks for our deployed forces, friends and allies, and the United States should be a top national priority.

The President's decision to refocus SDI is totally consistent with JCS requirements. First, for strategic defense, specific requirements set out in our 1987 requirements document include high defense effectiveness against limited ballistic missile attacks, man-in-the-loop control, survivable systems, and the ability to destroy specified percentages of warheads during a major Soviet attack. Meeting these requirements is important because Soviet offensive and defensive strategic forces continue to be modernized. In a post-START world, the Soviet Union will remain the only nation capable of destroying the United States within 30 minutes. Second, the related issue of theater missile defense was addressed by the Joint Chiefs of Staff in 1988 when we established the requirement to protect U.S. forces from an increasingly sophisticated threat. At the time, the threat was primarily based on Warsaw Pact and Soviet capabilities. Now, the situation has changed.

The end of the Cold War and the proliferation of theater missile capabilities outside Europe, graphically demonstrated in Desert Storm, are redefining the threat. We are reviewing requirements in light of the new situation, but it is clear that defense against theater ballistic missiles will be even more imperative in the future. GPALS is a very positive step in the right direction and one we support on its own merits. In addition, the SDI program should continue to develop the technologies and systems needed to make an informed choice for proceeding with a more robust missile defense should the geopolitical environment warrant.

In short, the Joint Chiefs of Staff fully support the President's decision refocusing SDI to provide global protection against limited strikes and urge the Congress to do so as well. This decision is in full consonance with military requirements, and it preserves our ability to expand the system to meet a much larger threat should a decision be made to do so in the future.

Sincerely,

COLIN L. POWELL,
*Chairman, Joint Chiefs of Staff.*

Mr. WALLOP. And with that, Mr. President, I yield the floor.

Mr. WELLSTONE. Will the Senator from Iowa yield 2 minutes to respond to my colleague?

Mr. HARKIN. Yes.

Mr. WELLSTONE. I appreciate the remarks of the Senator from Wyoming. If I can just respond for a moment, I would like to point out to him that, as a matter of fact, part of the problem with this whole proposal is that we do not know whether SDI is going to work. We do not know whether it is going to work at all.

As a matter of fact, if it generates a continuing arms spiral of offensive weaponry, seeking to overwhelm defensive weaponry, the arms race could go on and on. We are ready to spend this money, but we do not know if SDI works. But when I talk about health care, education, or job creation, or I talk about investment in children and young people, or I talk about investment in our own economy, and I say we have to do something about reducing the deficit, we have to start investing in the human capital in our future—all of which we do know works well—then all of a sudden we have a different standard.

So the Senator from Wyoming says let us go for broke; if we do not spend what we need, it will not work. There is a question as to whether we need it. I talk about things where everybody agrees we need it, but interestingly enough, we do not want to spend the money that will enable those things to happen. I find it to be a double code, and I think it is going to not do us well in terms of our future in this country.

I am sorry the Senator from Wyoming had to leave, but at least I did get to respond to some of his remarks while he was here.

Mr. HARKIN. Mr. President, how much time do I have left?

The PRESIDING OFFICER. Eight minutes seven seconds.

Mr. ADAMS. Five minutes.

The PRESIDING OFFICER. The Senator from Washington is recognized for up to 5 minutes.

Mr. ADAMS. I thank Senator HARKIN very much for that. I serve on the committee with Senator HARKIN that is faced with the problems mentioned by Senator WELLSTONE. We are cutting and capping every program that deals with the health of America, that deals with jobs in America, that deals with trying to take care of our domestic problems for our middle class, with unemployment compensation, the whole gamut. We do so because we have divided this budget into three parts, and the defense part is separate and sacrosanct. We can reduce the deficit, and we can stop this foolishness.

One of the things that bothers me most is when I see the people who believe strongly in defense in America shifting their ground and saying, "All right; now we do not have to protect against the Russian Empire. We knew we could not build SDI in space. We will go to land-based, and we will worry about individual missiles from fourth-party or Fourth World or Third World countries."

That system was tried and rejected years ago. I find it incredible that we will not vote to save $700 million and reduce the deficit. We may not be able to put this to health programs—I wish we could—but we should reduce the deficit that amount.

I want to remind my colleagues, in case they have forgotten—in particular the chairman of the committee and some of the others who were not here at that time—this has been debated on the floor many times. They forget Nike 1, Nike 2, and Nike 3. I remember when Scoop Jackson was the senior Senator from the State of Washington, and he was faced with a similar, ground based missile proposal. I can even remember the names of those missiles. One was Sprint. Those missiles would have gone up 25 miles in some cases, 50 miles in another, to meet the incoming missile, explode it in the air, and save us.

What happened to that proposal? They were going to do this in Magnolia Park, which is right at the edge of the city of Seattle. Some people started to look into it, local university profes-

sors, astronomers, and physicists. What they found out was that the enemy missiles would blow up at 25,000 feet, Senator WALLOP, which would create a dusting of atomic fallout that would kill everybody in the Seattle area. It would also, with the prevailing westerly wind, kill people and make them progressively sick all the way across the State into Spokane, and on into Idaho, and on into Wyoming, depending upon how big a bomb was exploded.

We have been through this before. We should cut this program. Maybe we should continue looking at the technology, maybe we will have a miracle appear and we will be able to use land-based missiles in some way to stop something.

But let me tell you this: I have opposed the proliferation of nuclear weapons, particularly in the Middle East. It was the basis of my campaign in 1986, and I feel it just as strongly now as I felt it then. We should not be allowing either missiles, and particularly nuclear-type weapons, into Third and Fourth World countries.

We should make them sign a nuclear nonproliferation treaty, and we should be inspecting in these countries. We should be certain that they are not fired, because there is no way you can go around this whole country, without spending billions and billions and billions of dollars, and put in Nike sites or other land-based sites that would stop every incoming missile.

These Fourth World countries and Third World countries, a lot of them are not going to do that way, anyway. They will penetrate with a suitcase, or they will penetrate with a small weapon that they will leave in some city and threaten everybody with. These terrorist-type attacks are a much more credible threat.

For us to spend the money of this country when we are so far in debt, or borrow it from the Japanese, and even consider a missile system that will cost enormous amounts of money over its lifetime—call it SDI or anything else—is something that is beyond my imagination and should not be undertaken by this Congress.

I sincerely hope the Harkin amendment will be adopted.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

The Senator from Iowa [Mr. HARKIN].

Mr. HARKIN. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator controls 2 minutes, 41 seconds.

Mr. HARKIN. Mr. President, I close my remarks by saying what this amendment does. It leaves in an inflationary increase for SDI. Our amendment fully funds the program that I think bothers most of the American people when they saw the Scud missiles and Patriot intercepting them. They want to be protected from Scud missiles and continue on. That course of action is left fully intact in our amendment. There is a 115-percent increase for theater missile defense. We have the same amount requested by the President. At the same time there is the amount put in by the Senate Armed Services Committee, 13-percent increase for research and support, 18 percent for follow-on, and 78-percent increase for limited defense systems. All of those are in there. But it does cut $700 million and provides for a real cut in the deficit next year.

I close on this one point. Next year, we are going to pass another milestone in this country. For the first time in the history of this country, the interest payments on the national debt will be larger than the entire Federal budget each year before 1975. Next year, for the first time in the history of America, the interest payments on our national debt will be the single largest Federal expenditure. It is time to start to bring that down, and this amendment does it.

I yield back the time I have.

The PRESIDING OFFICER. Who yields time?

The Chair recognizes the Senator from Georgia, Mr. NUNN.

Mr. NUNN. I yield to the Senator from Arizona [Mr. MCCAIN].

SDI IN AN ERA OF CHANGING DEFENSE NEEDS

Mr. MCCAIN. Mr. President, we have been debating variants of the same issue for some hours. We have already heard most of the arguments on both sides, and I do not want to repeat them.

As the hours have proceeded, however, I have been struck by one particular aspect of our debate. Time and again, the opponents of SDI and the advocates of the various amendments we are debating, have implied that they can predict a future in which the threats to our Nation do not grow, and a world in which all our problems with the Soviet Union can be solved with arms treaties of a kind that already exist.

In contrast, the advocates of strategic defense, and the compromise reached by the committee, have all talked about the uncertainties of the future. No one who has spoken for the SDI Program has opposed arms control. All, however, have recognized a bitter reality of history: That the world is an uncertain place, and that deterrence and defense are the only ways in which the most peace living States can ensure their security.

I do not claim to be a prophet. There are, however, a series of developments taking place in the developing world and the Soviet Union which I feel are critical to our debate and our decisions regarding SDI, and which I feel do deserve further discussion.

The nations of the developing world now spend an average of 20 percent of all Government expenditures on military forces: A total of $175 to $200 billion a year. They take delivery on an average of over 40 billion dollars' worth of arms a year, including approximately 1,500 modern main battle tanks, 2,000 artillery weapons, 3,000 other armored fighting vehicles, over 100 combat ships, 350 supersonic jet combat aircraft, and 5,500 surface-to-air missiles.

As Iraq has shown, some such nations can become massive threats to the security of their region, and this threat is almost certain to grow with time:

At least six countries are deploying or actively developing nuclear weapons.

At least 14 countries now have offensive chemical weapons.

Seven developing countries have biological warfare capabilities.

Twenty-one countries now have tactical ballistic missiles. Eighteen developing nations are likely to possess long-range tactical ballistic missiles by the year 2000, and up to 15 countries may be able to manufacture them.

Nine developing countries seem likely to acquire imagery satellites by 2000.

At one level of threat, the countries we are talking about include North Korea, Iraq, Iran, Libya, and Syria. At another they include nations we once thought of as stable—such as Algeria and India—who now seem determined to create a major capability to use weapons of mass destruction.

I cannot identify which of these countries will use these capabilities against us or our allies, any more than any member of this body predicted Saddam Hussein would seize Kuwait during the debates over defense cuts in early 1991. I do, however, feel that the advances taking place in booster technology and the weapons of mass destruction in the developing world will almost certainly inspire the Saddam Husseins of the year 2000 to try to target the United States.

Further, we are not talking about the instant deployment of strategic defenses, or freezing our development and deployment efforts for decades to come. We are talking about a concept that will be implemented slowly over time, and which we can evolve to suit a changing world. We are talking about an initial deployment permitted by the ABM Treaty, and an effort which may—by itself—deter hostile developing nations from efforts to use the advances in booster technology to develop missiles that can reach the United States. We are talking about a limited defense effort—of no more than 100 interceptors—that may be enough to persuade the Soviet Union that is simply cannot benefit from further efforts to improve its offensive forces.

We are also talking about a mix of land and space based technologies that will do far more than secure the United States against the direct threat of pro-

liferation and accidental launch. If the world does become more threatening in the 1990's and after the year 2000, there is no way we can provide ATBM coverage for our forces, our allies, and those who are threatened by dictators and aggressors all over the world—particularly when the cost of adding range to missiles will decline year after year after year. Only a mix of land and space based systems can provide cost-effective global coverage.

In the case of the U.S.S.R., let me note that I believe that the cold war is over. I do not, however, believe there is no Soviet nuclear threat. I do not believe that we can issue the Soviet Union a blank check of trust.

In fact, one of the ironies of the START Treaty is that it has taken so long to negotiate that, even after the START reductions take place, improvements in Soviet accuracy and MIRVing will leave the post-START Soviet threat against the United States just as lethal as it was when the START Treaty negotiations began.

Soviet heavy ICBM's, for example, will have improved enough in accuracy and lethality to have offset the coming cut in their number. Upgrades to Soviet medium ICBM's will give them much of the lethality of the heavy ICBM's of the past. And, there are massive ongoing upgrades to Soviet SSBN's and mobile ICBM's at a time when we have virtually scrapped our ICBM modernization effort and have made major cuts in our Trident Program.

We could, of course, deal with these uncertainties by buying more offensive nuclear weapons or making massive improvements in our strategic offensive weapons of the kind that the Soviet Union insists upon. This, however, seems the worst way to influence the developing world, and is the most dangerous way of competing with the Soviet Union. It is the most uncertain way to deal with uncertainty.

The alternative is a step-by-step approach to SDI. It is a phased and evolutionary program that will give us ample time to discuss the problems we face with the Soviet Union. It is a program that will slowly bring us to the edge of a deployment capability without threatening the peace.

If the developing world changes its course, and if the Soviet Union radically alters its present nuclear improvement programs, we will have wasted nothing. In fact, our lead in defensive technology will be a powerful incentive to both the developing world and Soviet Union to moderate their course.

If, however, we move forward into the mid and then the late 1990's, and the world has grown worse, we will be ready. We will be ready with defense and this is inherently more stable than a world in which the Soviet Union targets some 18,000 weapons on the United States.

Further, for all the talk of the ABM Treaty, the success of this treaty consists solely of the fact that superpower competition was channeled into building more and better strategic nuclear weapons. Success consists of a period in which the destructive power targeted on the United States more than doubled, and the Soviet Union gained an advantage in virtually every measure of first strike capability. In war fighting terms, the only thing this treaty could accomplish is the epitaph: "They died with the ABM Treaty unchanged."

I do not believe we should reject the ABM Treaty, but I do not believe that it is engraved in stone. The U.S.S.R. has said that it is willing to discuss the issue, and there may be no better way of forcing the Soviet leadership to come to grips with the true meaning of its ongoing efforts to upgrade its missile forces and the threat of proliferation.

In contrast, arms control for the sake of arms controllers is like law for the sake of lawyers: It loses all meaning and becomes dangerous. Let me remind this body that from 1922 to 1938, European efforts at arms control and the Washington Naval Arms Treaty also became sacred cows that lost their meaning. As a result, they became powerful forces that encouraged the rise of Nazi Germany and the attack on Pearl Harbor.

The issue at hand is not arms control for the sake of arms control, it is defense and strategic stability. Those who believe that they are at the end of history may believe that all that is necessary is arms control for the sake of arms control. Those who want to survive history, will advocate SDI and the defense of this Nation, its forces, its allies, and its friends.

Mr. NUNN. Mr. President, I am about to propound a unanimous-consent request, but I do not want to do so without the author's understanding of it. What I would propose to do, without asking for the unanimous consent at this point, is to temporarily set aside this Harkin amendment and move on to the other Harkin amendment and debate that amendment under the previous order which had time limitations and other limitations and then, after the completion of that debate, to have the rollcall vote on the first Harkin amendment followed by the rollcall vote on the second Harkin amendment.

Mr. HARKIN. I have no objection to that. Before we leave this, I want to ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. NUNN. I yield back the remainder of my time.

The PRESIDING OFFICER. All time controlled by the Senator from Georgia is yielded back. All time has expired on the first Harkin amendment.

UNANIMOUS-CONSENT AGREEMENT

Mr. NUNN. Mr. President, I ask unanimous consent that the Harkin amendment be laid aside temporarily and Senator HARKIN be recognized to offer an amendment regarding deployment, I believe the date of the deployment, to be considered with the previously agreed-upon time limitations and other restrictions. I further ask that when all time is used or yielded back on the Harkin amendment on deployment, which is the second Harkin amendment, that the question occur on or in relation to the Harkin amendment No. 980, without intervening action or debate. I ask, upon disposition of amendment No. 980, the Senate, without intervening action or debate, vote on or in relation to the Harkin amendment regarding deployment.

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

The first Harkin amendment No. 980 is temporarily laid aside.

The Senator from Iowa is recognized for the purpose of proposing a second amendment.

AMENDMENT NO. 981

(Purpose: To strike the deployment date in Section 211, the "Missile Defense Act of 1991")

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, Mr. JEFFORDS, and Mr. SIMON proposes an amendment numbered 981.

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

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

The amendment is as follows:

On page 33, lines 16 and 17, strike out "for deployment by fiscal year 1996".

On page 38, lines 5 and 6, strike out "capable of deployment by fiscal year 1996".

On page 43, lines 13, 14 and 15, strike out "As deployment at the anti-ballistic-missile site described in subsection (b)(2)(B) draws near to the deployment date of fiscal year 1996".

Mr. HARKIN. Mr. President, what was the time agreement on this amendment?

The PRESIDING OFFICER. The time agreement is 30 minutes equally divided.

Mr. HARKIN. Mr. President, I yield myself such time as I may consume.

Mr. President, this amendment simply strikes the deployment year 1996 in the Missile Defense Act of 1991. It leaves everything else unchanged.

It leaves the goal of deploying a treaty compliant 100-interceptor system at Grand Forks. It leaves the instructions to the President to renegotiate the ABM Treaty. I do not favor these steps, but this amendment leaves those provisions as written.

All this amendment does is to remove the starting date of 1996 for the treaty compliant 100-interceptor system at Grand Forks. I offered this amendment because I do not believe there is any rational justification for choosing a deployment year at this time. Proponents of this deployment contend that it would deal with two threats: accidental or unauthorized launch of ballistic missiles, presumably from the Soviet Union or a Third World nation attack.

So far we have had no analysis of these threats. We have no intelligence estimate of when a Third World nation, hostile to the United States, might have both deliverable nuclear weapons and long-range ballistic missiles with the capability to deliver those weapons to the United States. Both capabilities would take many years if not decades for a Third World nation to go beyond, say, the status of Iraq, for example. Iraq is actively pursuing the acquisition of enriched uranium, but has not yet tried to build a crude bomb, let alone a deliverable nuclear weapon. Iraq has modified Soviet Scud missiles by extending their range, but has no program to develop intercontinental ballistic missiles, including the difficult task of designing and building reentry vehicles to survive the enormous heat and stress of reentering the atmosphere traveling at speeds of 15,000 miles per hour. The Iraqi modified Scuds broke up in flight at speeds 5 or 6 times slower.

If the intelligence community concludes that no potentially belligerent Third World nation would have both deliverable nuclear weapons and long-range ICBM's for 15 years, and if we could deploy a 100-interceptor system at Grand Forks in 5 years, then why rush to deployment now?

We have time to consider the threats, and to plan the most cost-effective strategy to minimize those threats. And if the United States and its intelligence community decides in 5 or 10 years that diplomacy and export controls will not prevent a potentially belligerent nation from acquiring nuclear weapons and ICBM's, then we would be better off waiting for SDI to develop higher performance ground-based interceptors before committing to deployment. Deployment now for an artificial 1996 deadline could lock in less capable interceptors facing no plausible threat.

At this time, we have not even completed the research and development to choose which missile we would deploy at Grand Forks. The SDI Program is developing both the exoatmospheric GBI system that would attack warheads in outer space, and the Endo-Exoatmospheric Interceptor [E²I] that would attack warheads after they began reentering the atmosphere. Serious uncertainties exist in both of these interceptor programs and their associated sensors. Without further development and flight testing, it is premature to pick a deployment date. What ever happened to "fly before buy"?

With respect to accidental or unauthorized launches of nuclear armed ballistic missiles, why has this threat been brought to our attention at this time? With improved superpower relations, it seems rational to me that the risks of accidental launch are decreasing, not increasing.

And if the threat of accidental launch is rising, why are we not exploring other, more cost-effective measures, such as placing self-destruct explosive devices on all ballistic missiles?

Why are we not sharing PAL's [permissive action links] with the Soviets, to make sure that their nuclear weapons are under the best possible control?

We are not forcefully pushing ahead to START II, to make deep reductions in offensive nuclear weapons? The surest approach to reducing the probability of an accident is to reduce the numbers of nuclear weapons on both sides.

Mr. President, I would suggest that we take our time to fully analyze the threats and the possible remedies before we rush to select a deployment date.

We could be where we were many years ago, as the Senator from Washington pointed out, when we deployed some of these missile systems and found out they really were not needed to meet the threat that confronted the United States.

As I understand, Mr. President—the chairman may be able to correct me on this—but it is my understanding that there have been no hearings on this deployment. The Senate has not heard any outside experts. We have not considered the options that might be available to us like sharing permissive action links with the Soviet Union to make sure the nuclear weapons are in the best possible control, or other cost-effective measures, such, as I said earlier, by placing self-destruct explosive devices on all ballistic missiles.

Why are we not forcefully pushing ahead to START II to make deep reductions in offensive nuclear weapons? The surest way to reduce the probability of an accident is to reduce the numbers of nuclear weapons on both sides.

The amendment is very simple. It strikes the deployment date, leaving it open for our intelligence community, for Armed Services Committees to have hearings to find out what the threat is. How soon will a Third World country be able to develop, as I said, both a deliverable nuclear weapon and the intercontinental ballistic missile capable of delivering such weapons to the United States.

Second, with regard to the Soviet Union, here we are giving it most-favored-nation status. They are democratizing. They want to cut down on their nuclear arsenal. We signed START I.

It seems to me that is the path we ought to keep on with the Soviet Union to reduce the possibility of an accidental nuclear launch of an intercontinental ballistic missile. This is what this amendment really does. It takes a look. Let us take the time to assess the real threat, find out when that threat will become a real threat. If it only takes 5 years, and obviously what they are telling us with this bill is that it only takes 5 years to deploy these missiles, then at some point if we see the threat is 10 or 15 years away, then why do we have to rush into it right now? Let us wait and see what timeframe we really have to respond to a possible threat. That is all it does, Mr. President. It just strikes the deployment date of 1966.

I reserve the remainder of my time.

Mr. WALLOP. Mr. President, I will be very brief. I am referring to an article from the New York Times on Monday, July 15, which I think bears great relevance to this debate. It is about Iraq. The headline is "Iraqi Atom Effort Exposes Weakness in World Controls."

Scientists and weapons experts, surprised that Iraq secretly used a method abandoned by the West half a century ago to enrich uranium, say Iraq's feat is a blow to international efforts to stem the spread of nuclear arms.

In a single stroke, it has overturned decades of assumptions about which procedures and materials need to be safeguarded.

It goes on to say:

The fact that the Iraqis quietly used the forsaken method at all to produce weapons fuel showed great cleverness, the experts say.

It goes on:

Dr. Mark also criticized the nation's intelligence agencies for apparently failing to have discovered the clandestine effort at uranium enrichment.

"Why spend all that money on intelligence when it apparently and evidently learns nothing?" he asked. * * *

Leonard S. Spector, an expert on the spread of nuclear arms at the Carnegie Endowment for International Peace in Washington, said news of the Iraqi enrichment success had toppled the international program to stem weapons proliferation, which has focused on limiting advanced methods. "It's cataclysmic," he said. "All this was being done in Iraq without anybody knowing it. So who else is doing it? Everybody in the community knew this kind of thing was a possibility. But to be confronted by an example is devastating."

I would say to my friend that what the Senate committee has tried to do is put the experience of this war in some kind of perspective on behalf of the American people. And the route that I suggest the Senator is taking would reject that whole conclusion, that whole lesson and simply say there was nothing for us to learn. The bipartisan balance that is contained in the Senate Armed Services Committee proposal is

a very responsible approach to a new world in which all of us live now and did not think we lived in even so much as 1 year ago tomorrow.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, I yield 2 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington [Mr. ADAMS] is recognized for up to 2 minutes.

Mr. ADAMS. Mr. President, I think this debate concerns me more than almost any other that we have had on the floor for the simple reason that it goes back to the argument of the 1970's and repeats them. I have not objected, and neither has Senator HARKIN or others, to trying technological developments, trying to move ahead. But we have deployed various types of groundbase missiles from about 1955 on. We have tried one after another and they have all failed. When star wars came up, we are appalled because the scientific community once again said, this will not work. It may destroy the peace efforts between the two major powers and it will not work.

Now we have spent an enormous amount of money on this SDI program. If that money could have been spent in reducing the national debt, $40 billion, and if you figure 7 percent a year interest on that debt, that is a pretty good sum of money. If all of that money could have been spent in developing our technology in the automobile or the airplane or a number of other areas, we would be more competitive in our products around the world.

It is time to start concentrating on our people, and this amendment will help. To set off the deployment date as Senator HARKIN has said is not going to harm anybody. It is not going to change our defense posture.

Our defense posture for the next 10 years in Third World countries, and Fourth World countries, is going to rely on intelligence, nonproliferation as bad as it may be stated by the Senator from Wyoming, it is going to rely on a number of factors other than building of a lot of missiles in South Dakota. So I hope the Harkin amendment will be adopted.

Mr. President, so far, we have considered several amendments to moderate SDI and to guarantee our compliance with the Antiballistic Missile Treaty. I have supported those amendments, because the SDI system in the bill threatens to bankrupt the country and shatter international treaties, and I will continue to support such amendments. I rise at this point in the debate to say, simply, that this country cannot afford this SDI system. This amendment offers an exceptional compromise that will ensure protection that is fiscally sound.

I look around me today and see many of my most thoughtful and well informed colleagues working to achieve some suitable protection for the American people. Let me say, unequivocally, that I share their desire. But where does this protection start? Do we begin by protecting against the remote threat of an intercontinental ballistic missile attack? Or do we protect a woman's right to feed her children? Or the right of all Americans to adequate housing and education?

We can't do both. We must set realistic priorities and work diligently and consistently to achieve them. If we are to address the domestic priorities that all of the Members of this body profess to want to address, we cannot afford a 50-percent increase in SDI spending from last year's level. Let's work realistically toward a limited, single-site defense system that will not throw the ABM Treaty to the wind, and allocate the resources that our current domestic crises are crying out for.

I urge my colleagues to vote for the Harkin-Simon amendment before us. By reducing the SDI authorization to $3.2 billion would provide a net deficit reduction of $700 million. Even with this much-needed savings, the amendment would increase funding for ground-based theater missile defense systems.

This amendment is fiscally responsible, and offers a reasonable compromise that should be adopted. We cannot have it both ways on SDI and domestic programs, and I thank Senators HARKIN and SIMON for offering this responsible solution.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. HARKIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 7 minutes 50 seconds remaining.

Mr. HARKIN. I will just take a couple of minutes.

I want to respond to the distinguished Senator from Wyoming talking about Iraq. It is a long path from calutrons to deliverable nuclear weapons. Yes, it did come as a shock I think to most of the world to find out what the Iraqis had been doing with their electromagnetic devices for uranium isotope separation. But after they build enough calutrons, then they have to enrich enough uranium to make one or two bombs. After that, they have to build some kind of crude device, and then they have to design, build, and test a deliverable nuclear weapon. Finally, they have to design, build, and test an ICBM.

So they have to go through all these three steps before they could ever deliver a nuclear bomb from there to here. Not to say that they will not ever do it, or they cannot ever do it, but that is a long way down the road.

In regard to the defense that is needed against short-range tactical missiles, as I said in the previous amendment I offered, I left in full funding for theater missile defense research. So it is a long path for any Third World country to take before they would have not only deliverable nuclear weapons but the means to deliver them with an ICBM.

You know the Scuds were already starting to break up in flight and for an ICBM, which travels about 5 to 6 times faster than a Scud, the stress increases as the square of the velocity. The stress on an ICBM is therefore 25 times the stress on a Scud missile. And so they have a long way to go before they could ever deliver a nuclear weapon to the United States.

My amendment basically says that we should have an assessment of the real threat. What is the timeframe for that threat? Let us not rush into and put something out there now that may not really meet the real threat that may come 10 or 15 years from now if in fact we only need that 5-year window of time.

So I hope we would have some hearings on it, bring in the intelligence community, outside experts, consider what the options might be that we might want to pursue. This would, A, be more cost effective, and B, save us some money, and C, really provide for our real defense rather than leaping into something that may not happen.

I yield back the remainder of my time.

The PRESIDING OFFICER. The time controlled by the Senator from Iowa is yielded back.

Who yields time?

Mr. NUNN. Mr. President, just a few words in closing. And I say to all our colleagues who are listening, I think we will have a couple of rollcall votes here in the next few minutes.

Mr. President, the Senator from Iowa earlier mentioned that we had not had hearings on this subject or on this proposal. It is true that we did not have this amendment drafted and then have a set of hearings on it. But what we have had is a whole series of hearings over the last 8 years on the subject of SDI, extensive hearings. We probably have had 40 days of hearings total on the whole question of SDI.

And since 1988 I have been talking about the accidental launch protection system. I have been asking witness after witness after witness about their views on it. We have had critiques of it. We have had people who said it made sense, we have all the whole range of opinions on it. So we have had hearings.

There was a hearing dedicated to nothing but the accidental launch protection system. That is what it was called at that time. That was our description, because that had been the term I had been using in my remarks. We had a dedicated hearing on that specifically in 1988 and had people who

were both for it and against it appear under the chairmanship of Senator EXON who is head of the Strategic Subcommittee.

It is true that we have not had hearings on this particular proposal, because this proposal evolved out of all of that and came in markup and is the nature of what the harvest is after an awful lot of planning and thoughts over the years.

Mr. President, I oppose the Harkin amendment that we are now debating which is relating to the time element. The amendment would delete from the committee SDI provisions a target date of 1996 for the initial operation capability for the Grand Forks or single-site limited ABM defense site.

Mr. President, it is important, when we are embarking on any new initiative, it is important I think to set a goal. It is important to declare a goal. Setting a goal matters. It makes a difference.

What matters also is setting a target date for achieving that goal. As I have said before in this debate, we in the Congress have set many goals. We do not always achieve those goals but we do set goals.

In 1961, it was important that President Kennedy declared the goal of landing a man on the Moon. But he did not just say people of America, "I hope one day we will land a man on the Moon." He set a date. He was not absolutely certain we were going to meet that date. He could not tell whether every rocket was going to be built on time or whether all the programs were going to work. He hoped it would. But having that date made an enormous amount of difference in the whole program, and of course it turned out the date was met.

Without having a date, without having a timeframe, it is very unlikely we would have ever gotten to the Moon by 1970. We have set a target date in this goal, in the architecture we have set forth here, of 1996, as the Senator has observed. That does not guarantee we can meet that timeframe.

We will be reviewing every year to determine it. We are having to slide programs all the time. I just got a telephone call a few minutes ago on a program that is going to have to be delayed because they ran into a problem. That phone call came from the Pentagon. We are going to have to delay at least the achievement of certain goals in respect to that particular program, unrelated to this subject here today.

But it is important we have an initial operating capability [IOC] goal. I think it is important for Senators to understand there is a difference between the IOC, which is the initial operating capability—that means having a missile or two missiles that are basically in position and can be operated—there is a big difference between that and reaching the full operational capability. The full operational capability may be 1 year later, it may be 2 years later. We do not have that information now. But we have set a goal. I think it is important to continue that goal.

I would oppose the Harkin amendment.

Mr. ADAMS. Will the chairman yield for a question?

Mr. NUNN. I will be happy to yield.

Mr. ADAMS. I just wanted to know which of these options the committee was pursuing with this deployment. We had a racetrack which went around the whole west at one time. Then we had trains going in and out of air bases carrying missiles. Then we had what was called dense pack, which would have put a hundred missiles in one site in North or South Dakota, but it was found that electrical discharges would send them all up in the air and explode them. Then we decided just to put them in the holes where we have them now.

I wonder if the committee—since it has a deployment date, a goal—whether or not it is too soon to have that in mind? Or if the Senator could tell me whether he has decided on one of these things, or which of the steps he has outlined he is going to take?

Mr. NUNN. The Senator is referring to the steps we all went through and were frustrated by with regard to the MX, which is an ICBM. We still are struggling with. We ended up putting those MX's in the silos.

I think the point of the Senator is correct in the extent we went through those various MX deployments. These missiles are interceptor missiles. They are not designed to fly to the Soviet Union. They are basically designed to be able to intercept missiles coming toward the United States.

So I do not think we will have that kind of deployment debate. There is no question these missiles will be deployed on the ground. There is no question they will be deployed in silos. They will not be mobile. We will not have racetracks. None of that will be applicable in this case because the purpose of these missiles is totally different. They have a different mission.

Mr. ADAMS. I understand these missiles, which are intended to protect the United States—we are not protecting just South Dakota, at least I assume that is not what we have in mind—have a minimum range of somewhere around 2,000, 3,000 miles. That makes them a very long-range ICBM, which faces the same kind of problem as the original missiles we were using for deterrence.

That is why I asked the question. We are faced with exactly the same problem. I see us putting a lot of money into missile defense. I have the utmost—and I mean this very sincerely—for the Senator from Georgia and the Senator from Virginia. I think they are both beautifully intelligent people and I think they also are very dedicated people.

But I see us jumping off on a program here that we have been through at least twice before. Does my colleague have something in mind for a 2,000- or 3,000-mile missile that is somehow going to travel around the United States and be deployed by a specific date?

That seems to be what the Senator is saying, if he sets a deployment date that puts into motion a whole series of things. As the Senator outlined, we would develop the missile decide where to put them and how to put them there. We cannot use the same holes we have now because those holes will not defend the entire United States, unless we have some kind of missile I have never heard of.

Mr. NUNN. The Army has done the major work in this respect, along with the numerous contractors involved, because there are several competitor interceptor missiles. They have not selected the missile yet and probably will not for a couple of years. All have agreed that a 1996 initial operating date is a realistic date.

But, again, I have seen realistic dates slip before and it could slip. There is nothing in the law that says it cannot slip. We are setting that as a goal, but if we do not have any goal we do not make much progress on any weapons system. We have virtually no weapons systems in this entire bill that does not have a goal for initial operating capability. That is just part of the procurement process.

I thank my friend from Washington. I will be happy to yield back all my time. I believe the yeas and nays have been ordered.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. All time has been yielded back on amendment 981.

The yeas and nays have been ordered on amendment 980. They have not on amendment 981.

Mr. HARKIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. NUNN. Mr. President, is a tabling motion in order?

The PRESIDING OFFICER. A tabling motion is in order.

Mr. NUNN. Mr. President, I ask unanimous consent the first vote be the normal vote, and the second vote be a 10-minute vote.

The PRESIDING OFFICER. Without objection, it is so ordered. The first vote will be the normal 15 minutes and the second vote will be a 10-minute vote.

AMENDMENT NO. 980

Mr. NUNN. Mr. President, I move to table the Harkin amendment now pending, and I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the motion to lay on the table the amendment (No. 980) of the Senator from Iowa.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from California [Mr. CRANSTON] is necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

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

The result was announced, yeas 60, nays 38, as follows:

[Rollcall Vote No. 171 Leg.]

YEAS—60

| | | |
|---|---|---|
| Baucus | Durenberger | Murkowski |
| Bentsen | Exon | Nickles |
| Bingaman | Ford | Nunn |
| Bond | Garn | Packwood |
| Boren | Gorton | Pressler |
| Brown | Graham | Robb |
| Bryan | Gramm | Roth |
| Burdick | Grassley | Rudman |
| Burns | Hatch | Seymour |
| Coats | Heflin | Shelby |
| Cochran | Helms | Simpson |
| Cohen | Hollings | Smith |
| Conrad | Inouye | Specter |
| Craig | Kassebaum | Stevens |
| D'Amato | Kasten | Symms |
| Danforth | Lott | Thurmond |
| Dixon | Lugar | Wallop |
| Dodd | Mack | Warner |
| Dole | McCain | Wirth |
| Domenici | McConnell | Wofford |

NAYS—38

| | | |
|---|---|---|
| Adams | Harkin | Mikulski |
| Akaka | Hatfield | Mitchell |
| Biden | Jeffords | Moynihan |
| Bradley | Johnston | Pell |
| Breaux | Kennedy | Reid |
| Bumpers | Kerrey | Riegle |
| Byrd | Kerry | Rockefeller |
| Chafee | Kohl | Sanford |
| Daschle | Lautenberg | Sarbanes |
| DeConcini | Leahy | Sasser |
| Fowler | Levin | Simon |
| Glenn | Lieberman | Wellstone |
| Gore | Metzenbaum | |

NOT VOTING—2

| | |
|---|---|
| Cranston | Pryor |

So the motion to lay on the table the amendment (No. 980) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 981

Mr. NUNN. Mr. President, I believe we have a pending amendment, the second HARKIN amendment. I move to table that amendment and ask for the yeas and nays.

The PRESIDING OFFICER (Mr. BRADLEY). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Georgia to lay on the table the amendment of the Senator from Iowa. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from California [Mr. CRANSTON] is necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

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

The result was announced—yeas 64, nays 34, as follows:

[Rollcall Vote No. 172 Leg.]

YEAS—64

| | | |
|---|---|---|
| Baucus | Durenberger | Murkowski |
| Bentsen | Exon | Nickles |
| Bingaman | Ford | Nunn |
| Bond | Fowler | Packwood |
| Boren | Garn | Pressler |
| Breaux | Gorton | Reid |
| Brown | Gramm | Robb |
| Bryan | Grassley | Roth |
| Burdick | Hatch | Rudman |
| Burns | Heflin | Seymour |
| Byrd | Helms | Shelby |
| Coats | Hollings | Simpson |
| Cochran | Inouye | Smith |
| Cohen | Kasten | Specter |
| Conrad | Kerrey | Stevens |
| Craig | Kohl | Symms |
| D'Amato | Lieberman | Thurmond |
| Danforth | Lott | Wallop |
| Dixon | Lugar | Warner |
| Dodd | Mack | Wirth |
| Dole | McCain | |
| Domenici | McConnell | |

NAYS—34

| | | |
|---|---|---|
| Adams | Hatfield | Moynihan |
| Akaka | Jeffords | Pell |
| Biden | Johnston | Riegle |
| Bradley | Kassebaum | Rockefeller |
| Bumpers | Kennedy | Sanford |
| Chafee | Kerry | Sarbanes |
| Daschle | Lautenberg | Sasser |
| DeConcini | Leahy | Simon |
| Glenn | Levin | Wellstone |
| Gore | Metzenbaum | Wofford |
| Graham | Mikulski | |
| Harkin | Mitchell | |

NOT VOTING—2

| | |
|---|---|
| Cranston | Pryor |

So, the motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Who seeks recognition?

Mr. NUNN. Mr. President, I intend to propound a unanimous-consent agreement that has been agreed to by the authors of the B–2 amendment. This is a Leahy-Cohen B–2 amendment.

I ask unanimous consent that when Senators LEAHY and COHEN offer their amendment relating to the B–2, that there be 4 hours for debate, equally divided and controlled between myself and Senator LEAHY; that there be an additional 45 minutes for debate under the control of Senator SASSER; that no amendment to the amendment be in order, nor to any language which may be stricken; that no motion to recommit be in order; further that when all time is used or yielded back, the Senate, without intervening action or debate, proceed to vote on or in relation to the Leahy-Cohen amendment.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Mr. President, reserving the right to object, and I shall not, I understand that this, of course, does not preclude other amendments relating to B–2 or strategic bombers to come up. I have none of my own. I want to make that clear for others who have asked.

Mr. NUNN. It does not prevent them from coming up. It does not encourage them from coming up, either.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, reserving the right to object, I want to make certain that the unanimous consent as drafted in no way precludes the yielding back of time by all Senators. I want to make that clear because we are in an effort to move this bill along. It may well be that the full time is not required.

Mr. LEAHY. Mr. President, further reserving the right to object, I would let the distinguished senior Senator from Virginia know that it is the intention of one of the sponsors of this, if it at all possible, to yield back time. But as I have told the distinguished managers of the bill, there has been an effort to accommodate numerous Senators both for and against the Leahy-Cohen, et al., B–2 amendment. That is why this amount time has come up.

Mr. WARNER. I thank the distinguished colleague.

May I ask, could we see a copy of the amendment?

Mr. LEAHY. Of course. This is basically the freeze at current production, but I would, certainly, yes. I thought the distinguished Senator had a copy. I will make sure he has it.

Mr. NUNN. It is my understanding, if the Senator would yield, this would eliminate all production in the committee bill which in fact would eliminate four aircraft.

Mr. LEAHY. We will have a copy.

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

AMENDMENT NO. 994

(Purpose: To reallocate for deficit reduction and the Strategic Defense Initiative the amount authorized to be appropriated for the Defense Agencies for fiscal year 1992 for research, development, test, and evaluation)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Arkansas [By Mr. BUMPERS] proposes an amendment numbered 994.

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

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

Strike line 17, page 40, through line 12, page 41, and insert the following:

(A) not more than $840,000,000 shall be available for programs, projects, and activities within the Limited Defense System Program element;

(B) not more than $857,460,000 shall be available for programs, projects, and activities within the Theater Missile Defense Program element;

(C) not more than $305,373,000 shall be available for programs, projects, and activities within the Space-Based Interceptors Program element;

(D) not more than $775,149,000 shall be available for programs, projects, and activities within the Other Follow-On Systems Program element;

(E) not more than $822,018,000 shall be available for programs, projects, and activities within the Research and Support Activities Program element; and

(F) not less than $1,000,000,000 shall be available solely for reducing the Federal Government budgetary deficit for fiscal year 1992.

Mr. BUMPERS. Mr. President, I think this is the sixth and just about the last SDI amendment. This is an amendment which cuts the spending on SDI overall by $1 billion, from $4.6 billion to $3.6 billion. But that's still a 20-percent increase over this year's level.

Let me say at the outset, Mr. President, the amendment as described in the "Dear Colleague" letter on your desk is slightly in error. In the second item, phase 1 of Brilliant Pebbles, the figure should be $305 million instead of $155 million; and on so-called follow-on technologies, that should be $755 million rather than $925 million.

Mr. President, there are some points that need to be made to open this debate, and the first one is everybody here agrees that we are going to wind-up building some kind of a limited antiballistic missile system. I myself have said that is one thing that makes some sense against accidental launches and unauthorized launches of intercontinental ballistic missiles.

The language, incidentally, that is used in all these strategic weapons debates should be rather precise, and I just got through saying a limited defense system against accidental, unauthorized launches or even Third World launches of intercontinental ballistic missiles might make some sense. I did not say anything about cruise missiles or bombers or clandestinely introduced weapons. Because the limited system that is envisioned in the bill before us does nothing—repeat, nothing—to keep the Soviets, Mu'ammar Qadhafi, or Saddam Hussein from hiring a private jet airplane in Cuba to fly into the United States and drop a nuclear bomb. SDI, Brilliant Pebbles, or whatever technology we may settle on is to take care of weapons coming in from outer space.

Explore that for a moment. We could build a system in the central part of the United States, and I believe that Arkansas would be protected. The temptation to vote for this because my State is one of the few States that would be protected is almost irresistable. But my State will not be protected against a private jet flying from Cuba across Louisiana, into Little Rock, AR, and dropping a nuclear bomb. You could spend $12 billion to $100 billion on this limited system and you have not touched that.

So, Mr. President, my amendment ought to please everybody, including the chairman of the Armed Services Committee, because I leave in the bill $840 million—repeat, I leave in the bill $840 million—to begin research on the so-called limited ground-based antiballistic missile system.

Now, why would anybody be offended by that? What is the big rush, when the defense community, the intelligence community, tell you that there may be three more countries by the year 2000 added to the ICBM family.

Experts say that anybody that can put something in space has the potential capability. So that means that Brazil and Israel and India, by the turn of the century, could possibly join the Soviet Union, the United States, China, France, and Britain in the ICBM category.

But they will also tell you that the people you say you fear, Third World enemies, will not have the capability until well past the turn of the century. So why do we want to abrogate the ABM Treaty and start deploying our first part of a limited ground-based defense system in 1996?

Second, why do you want to to put $1.551 billion into a ground-based ABM system when not one person in this body has a clue as to what kind of technology we are going to use to do it? Why not proceed with a little sanity? I know that in a shock to a lot of people. But why not use a little common sense in how we approach this?

Mr. President, a lot of people have forgotten the big furor in this country to build an antiballistic missile system back in the 1960's. In the ABM Treaty, signed in May 1972, we provided that both the United States and the Soviet Union could each have two separate ABM systems. Later they decided to cut it to one system. We built the system.

People here have forgotten that we built an antiballistic missile system in North Dakota, in Grand Forks. Back in 1975, one of the first votes I cast in the U.S. Senate, after we spent $6 billion on it, was to start dismantling it. Any why? Because we went headlong into building it with no thought as to whether the technology was going to work or not. Se we spent $6 billion of the taxpayers' money and started dismantling almost the day it was finished. Any you could head right down the same path if we pass this bill in its present form.

So what I am saying is $840 million "ain't bean bag" for the first year. And you are not going to develop the technology any faster by putting $1.551 billion in it. And some of the money, quite frankly, if I had my way about it, some of the $1.551 billion ought to go into air defense systems.

Mr. President, we have an air defense system along the Canadian border because we assume that the Soviet Union will send their bombers over the North Pole to strike the United States. That is about the sum and substance of our air defense system. The east coast and the west coast and the southern coast off the Gulf of Mexico are not really defended.

My God, some poor, lonely Cuban pilot tried to defect a few months ago and bring a Soviet-made Mig to the United States because he wanted to defect and they made him circle Homestead Air Force for 30 minutes before they would let him land; we did not even know it was a Soviet Mig.

So here we are talking about spending $1.5 billion for the first year on a system that nobody has a clue as to how it is going to work. But put the best face on it and assume it is going to work magnificently, and you still have a vulnerability big enough to drive a wagon and team through.

You can spend $1 trillion on SDI; you can spend $40 billion in Grand Forks, ND, and you still will not keep Saddam Hussein, Mu'ammar Qadhafi, or any other lunatic in the world from introducing suitcase-size nuclear bombs in a bale of marijuana. And that is where I would put it. We cannot ever find most marijuana. If I were Saddam Hussein and wanted to attack the United States with a nuclear bomb, I wouldn't spend billions to develop an ICBM. I would take the nuclear bomb and I would conceal it in a marijuana bale and direct that it be placed under the Statue of Liberty or the Washington Monument. And all the trillions or hundreds of billions you spent will not stop it.

Or I would place a whole bunch of ships off the east and west coast loaded with cruise missiles that fly 200 feet off the ground.

All the trillion dollars you would have spent on SDI or the $40 billion on Grand Forks will not stop one single cruise missile from coming into this country. The trillion dollars you spend on SDI and the $40 billion you spend on Grand Forks will not stop one single airplane from coming into New York City, or Los Angeles, or San Francisco, or New Orleans, or Miami. What good

will your trillion dollars do you then? Zip; zero.

So to come back to where I started, I am saying I am leaving $840 million in here. I think it is too much, but I am trying to buy some votes. It is sure a lot better than a billion and a half. And I am saying, if we had any sense it would not hurt to use a part of this $840 million that I am leaving in my amendment for this limited system to start building our east and west and southern coast air defenses.

The Soviet Union thinks they have the most magnificent air defense system in the world, and they have spent somewhere between $300 billion and one-half trillion dollars on an air defense system, and a 27-year-old kid from Berlin flies a Piper 150 and sets it down in the Kremlin yard. And a couple of Korean airliners flew over Soviet territory for hours before they were detected. And I must say, that points out how silly some of this stuff is.

The other point I want to emphasize strongly, because I do agree with this, is that I do not—repeat, do not—change the funding numbers on theater missile defense from the figures of the Armed Services Committee. The Patriot did not perform as well as it is reputed to have performed. But it performed in a way that was rather surprising and pleasing to a lot of people. I am pleased to say I had always been a supporter of the Patriot. And it shows that we need theater missiles; missile defenses against these short-range missiles.

But we are not going to build a Patriot that will stop a ballistic missile coming in from outer space if it is intercontinental.

For the edification of my colleagues, the Scud comes in from outer space at 3,000 miles an hour Do you know the speed the warheads come in off the SS–18, the Soviet Union's SS–18? 16,000 miles an hour. We are talking about apples and oranges when we are talking about these two systems.

I can tell my colleagues, stopping an intercontinental ballistic missile, it is not harder just because it is five or six times faster; it is a lot more than that. The technology required is so much greater.

Everybody says, well, the Soviet Union still has one deployed around Moscow, an antiballistic missile system around Moscow.

Talk to the CIA. That thing would not hit a bull you-know-where. It is absolutely, utterly worthless, just as ours at Grand Forks was, and we had the good sense to dismantle ours.

I am not trying to stop GPALS. I am not trying to stop a limited anti-ballistic-missile system. What I am saying is we do not have to deploy it in 1996. We are getting ready to spend a lot of money that is going to be wasted because of a concept, not because of a technology. We have spent, as of this moment, $24 billion on SDI, and the benefits are so marginal they are not worth discussing. We have discarded virtually every technology that anybody could conceive of since that program started. And nobody knows where it is going.

I leave $300-and-some million in this for Brilliant Pebbles. That is the hardest thing I ever did in my life. Because GAO, on whom we rely so much, thinks just about as much of Brilliant Pebbles as I do.

I do not know anything about space defenses. I am a lawyer. I do not know the first thing about physics. I did not even have high school chemistry. But I grew up in a small town where common sense was a pretty good commodity, and common sense tells me that when five of the original seven key elements of SDI in 1989 have been discarded just 2 years ago, it tells me that the $24 billion we spent so far has been largely wasted. And I do not want to make the same mistake again.

Mr. President, how much time do I have remaining on my side?

The PRESIDING OFFICER. The Senator has 29 minutes remaining.

Mr. BUMPERS. Mr. President, I have others who wish to speak, but I want to address a couple of items. The point has been made over and over again here but it just seems to be lost, or nobody really cares, and that is this so-called new world order and the new relationship we have with the Soviet Union. I do not understand, when you consider the risk, and the greatly reduced risk of the Soviet Union, which is an absolute economic basket case.

Incidentally, do you know what Gorbachev said to Bush at the economic summit in London? "Why do you not come over here and help us convert our military factories to civilian use? That is where we need help."

Would it not be nice, if we were not $4 trillion in debt and not looking at a $348 billion deficit in 1992, to say to Gorbachev, "Count us in, pal. We will help you convert every military capability you have to civilian purposes. We glory in this new world order and the reduced threat of nuclear annihilation." And we keep saying, "If you keep allowing elections, keep letting people vote, and you keep moving toward a market economy, we will consider helping."

As much as I would like to do that, tell me how we do that looking at a $348 billion deficit next year. The deficit has grown so large, we very seldom hear it mentioned around here anymore.

The other day, I tried to torpedo the space station—and I do not denigrate a single Member of this body on how they vote, because that is what people send them here to do is vote, and vote for what they think is right.

But I can almost see the wheels turning when I say we are going to save $1.2 billion. You can hear people's wheels turning in their heads. If the deficit is going to be $348 billion next year, they say, what is $1 billion? I will tell you what it is. It is real money in my State—$1 billion is a lot of money. The reason I have been attacking the space station and SDI and the super collider and all the other boondoggles that are sending this country to economic ruin is because I care about my children and my grandchildren. When you vote for my amendment, you are not just voting to cut $1 billion out of this SDI budget, you are voting to save about $80 million a year in interest costs each year, forever.

Next year, interest will be the biggest item in the U.S. budget. For the first time in history, both defense and Social Security will take a back seat to interest. If anybody around here cares, for God's sake, start voting the way you care.

I sat by a Senator at lunch the other day, one of the most conservative Senators in the U.S. Senate. He said, you know, I spent a lot of time over the weekend trying to figure out if there is any hope for the future of this country, and I have just about concluded that it is irreversible; that all we can do is suck it up and wait for the apocalypse to occur.

I said, I suppose at the belt buckle level I have a tendency to agree with that, but intellectually I do not let myself think that. I am going to continue to come to the Senate floor, and I may get my brains beat out day after day after day, but I am not going to jump in the tank and threaten the very survival of this Nation by voting for these kinds of expenditures on an emotional impulse and at a time when, for example, the British press says it is a colossal mistake for the times. What they were saying is, here is Gorbachev and George Bush clinking their champagne glasses together and saying, "Aren't we wonderful. We have just entered into the START Treaty and just signed the CFE Treaty; is it not wonderful?"

Gorbachev walks out of this magnificent dinner, and one of his military aides says, "Mr. President, do you know what they are doing in the U.S. Senate? They are going all out." Since we have agreed to cut 4,000 warheads out of our arsenal, what do you think they are doing? They are building a defense system to take care of the 8,000 we have left. Do you know the former Soviet commander of the military said to a U.S. military commander, "You go ahead and build SDI, you can probably do it. It will not be worth much to you but technologically I do not deny you can do it." He said, "We do not have the technology or the money to build SDI in the Soviet Union. I will tell you what we will do. We will do what we know how to do best. We will build more missiles with more warheads, and we will overwhelm your system." Which is another way of saying, "If

you go forward with this with no consultation with us, the arms race is on again." It may not be on with Gorbachev, but I can tell you at the rate things are going in the Soviet Union, I would say the chances of a military coup are wonderful. Do you think the military of the Soviet Union cannot go to the Russian people and say, "Here is what we have given, and we gave and we gave and we gave, and how do the Americans respond to this new world order? They are trying to build a defense system so that we will be vulnerable and they will not. Instead of deterrence, knowing that we can each destroy each other, they are trying to fix it so they can bring us to our knees by building a defense system and say to us, you cannot attack us and you do not have a system so we can attack you." It is the most destabilizing thing we could do.

Mr. President, do we want to start down the path torpedoing about the only treaty we still have with the Soviet Union, namely, the Anti-Ballistic-Missile Treaty, at the very moment that START Treaty is being signed to cut nuclear warheads? When we start building this defense system without consulting them, they are going to start withdrawing from the START Treaty, which they have a right to do. To assume that the Soviet Union is going to cut and cut and cut while we build a defensive system to destroy the remaining weapons they have, to assume that they are going to sit still and tolerate that is to suggest that they need a saliva test.

Just reverse the roles—I made this point last night; I make it again—what do you think would happen to George Bush if he tried to sell this to the American people and our roles were reversed?

"Senator, you are up next year. How would you sell this to the people of your State that you agreed to cut 20,000 tanks and 20,000 personnel carriers and 4,000 nuclear warheads, and the Russians are going all out to build a system to make sure the remaining warheads we have cannot hit them? Reelect me." You would be laughed off the podium and certainly would be laughed out of the State when the election came around. It is not that much different in the Soviet Union.

Mr. President, I am going to reserve the remainder of my time. I have a number of people who have asked for permission to speak, and I want them to. At this time, I would like the other side to use some of their time, if they would. I yield the floor.

The PRESIDING OFFICER (Mr. LIEBERMAN). Who yields time? The Senator from Mississippi.

Mr. LOTT. Mr. President, I yield myself such time as I may consume.

Mr. President, before I address the pending amendment, I want to make some general remarks about the bill itself. I would like to begin by saying that I think the Armed Services Committee has done a good job with this bill. I want to commend the distinguished chairman, the Senator from Georgia, and the distinguished ranking member, the Senator from Virginia, for their hard work and for their patience in dealing with the members of the committee. I think they did a good job across the board on this bill, whether it is conventional forces or the base closure provisions of the bill. Across the board, I think they did good work, and the committee has produced a good piece of legislation. It is not perfect but it is good overall.

I am very concerned about the overall impact of the reduction in spending. I was opposed to the budget agreement last year, and I still think it was a flawed agreement for a variety of reasons. I opposed the agreement, it did not reduce spending overall, but it did cut defense severely and because it substantially raised taxes. But we made an agreement. Even though I voted against it, I am prepared to support what we did in that budget agreement—in the defense area every other area. The Senate Armed Services Committee did comply with the agreement and we made tough choices in terms of what we are doing with ships, aircraft, personnel—all across the board.

At some point, we are going to have serious problems in meeting the strictures of that budget agreement.

We learned some good lessons from the gulf war. We learned that some equipment worked quite well, and some equipment didn't work well. We proved that our tanks and aircraft are superior fighters. And we found we needed some modernization in our Marine Corps hardware.

Those areas are addressed in this legislation. We beef up some areas and we reduce spending in areas where it makes sense.

I am particularly pleased with what the committee did in the strategic defense area and specifically in the strategic defense initiative. This language in the bill was laboriously worked out in a bipartisan fashion. This is really a historic agreement from the committee on the strategic defense initiative because we did get an overwhelming vote in committee, 16 to 4, a bipartisan vote for the language we have in the bill.

I think the leadership from the chairman and our ranking member clearly made the difference. After years of wrangling and after billions of dollars, for the first time we have an agreement which will allow us to benefit from the money we have spent and finally move us toward strategic defenses. But I will come back to that in a moment. I will also talk just briefly about the amendment we have pending before us.

My concern over this bill is reflected by a quote from former Prime Minister Lester Pearson in Canada in which he said—it would be applicable to America—"The grim fact is we prepare for war like precocious giants and for peace like retarded pygmies."

We have a great opportunity to take a serious look at our military, and ask some serious questions. What do we need? How can we project forces? Where we can make savings, both in foreign investment and in foreign bases and also with our domestic bases?

We have a chance to take a fresh look at what we need with bombers. The B–2 bomber was vigorously debated in the committee. We discussed it. I have problems with it. I question the mission. I question the cost. But I think the committee came up with the right answer. We should go forward with what we have recommended in the bill on B–2. I must say that with me it is a close call, but I have listened to the debate and I feel we do need to go ahead with the committee position.

While this Defense authorization bill is good taken in total, there are fundamental flaws in the direction we are pursuing. If we are not careful, Lester Pearson's pronouncements may apply to us.

IMPACT OF A FLAWED BUDGET AGREEMENT

Last year, the Congress passed, after bitter debate, a buget resolution which mandated harsh reductions in our defense capability—while dramatically increasing taxes and increasing domestic spending.

The argument, used by almost everyone supporting this shift, focused on the fall of the Berlin Wall and the dissolution of the Warsaw Pact. Nobody seemed to think we would ever need the war fighting capability we had built to deter the Soviets.

What a difference a year makes. Never before has the Congress been so wrong. Saddam Hussein and the Iraqi invasion have proved the error of our own decisions. And the cuts forced by the budget resolution are represented in this bill.

With this bill we are committing ourselves to slide down a slippery slope which will lead us to a Navy fleet of less than 350 ships in the next 10 years. We will have 10 fewer Army divisions and a diminished ability to project real military power, represented by the retirement of our remaining battleships.

Secretary Cheney in testimony before the committee acknowledged that we will not have the capability to conduct another deterrent action in the gulf and ensure the defense of our other interests throughout the world.

GULF WAR LESSONS

We learned a lot in the gulf war—and many of those lessons are clearly reflected in our bill. The need for a Marine Corps modernization is a significant lesson. Our marines were the first on the ground to defend Saudi Arabia and deter further aggression. The addition of heavier armament, a beefed up

night fighting capability of the Harrier jump jet and the overhaul of maritime pre-positioning will significantly improve the war fighting capability of our Marine Corps.

STRATEGIC DEFENSES

We also learned firsthand the real terror ballistic missiles can impose on a nation and its forward deployed military units; 28 dedicated service men and women lost their lives when one technically unsophisticated ballistic missile struck a barracks in what was formerly called a rear area.

REAGAN'S VISION

In 1981, President Reagan visualized the reduction in size of the superpowers' strategic nuclear arsenals. Reagan's critics cried "We can't do that!" Yesterday, President Bush signed the START agreement in Moscow. Ten years ago Congress said we couldn't do it, but we are doing it now.

In 1981, Reagan set about rebuilding our military capability, which had dwindled into obscurity. A decade later Reagan's vision again produced a success as American military might trounced Saddam Hussein's military in 100 short hours of ground combat. It took 10 years, but we did it.

In 1984, Reagan also had a vision of protecting the American people from nuclear ballistic missile attack. Again, the critics in Congress cried, "We can't do that. It won't work. It is too expensive." So they tried to turn the SDI Program into a research and development program designed not to produce effective defenses. But Saddam Hussein changed all that with nightly ballistic missile attacks on innocent people in Saudi Arabia and Israel.

Today, the committee supports a bill which will begin funding a program which specifically sets out to deploy missile defenses in this country. The critics are still out there singing the same old tired song with the same old bankrupt message. You have heard them already, and you will hear them some more.

But I remind you of the words of H.G. Wells, "Human history becomes more and more a race between education and catastrophe." Will we become educated by our own history, or will catastrophe be our fate. The choice is ours.

If we have learned anything from our experience with Saddam Hussein, it is two things: First, we cannot wholly rely on deterrence to preserve the peace; and second, we must finally get serious about strategic defenses.

The men and women in our armed services deserve it and the American people demand it. The time has come for us to defend our population at home and our troops abroad. Anything less is unacceptable. This bill—for the first time—begins moving this country in the right direction.

Mr. President, some of these same critics want to water down the committee's SDI provisions. I would caution those who may pursue this course. The American people are watching the Senate's action on strategic defense, just as they watched as the Patriot missiles intercepted Scuds over Saudi Arabia and Israel courtesy of CNN.

B–2 BOMBER

The B–2 bomber is one of the most controversial elements of the committee bill. It is essential that we consider the B–2 in the context of the larger strategic picture. Without a robust and effective strategic defensive system, the B–2 is ineffective as a strategic weapon.

Designed as a second strike asset, the B–2 must be capable of surviving an initial strike by the Soviets. Without effective strategic defenses the B–2 basing will be destroyed, rendering it useless as an effective second strike asset or a surviving deterrent force.

Because of this weakness, the B–2 is inextricably linked to a strategic system which comprehensively approaches the question of nuclear deterrence and stability. Taken in isolation, the B–2 is little more than an expensive conventional bomber. In that role it is most effectively employed in contingencies which require no forward basing and a stealthy penetration capability. Limited in this way, it is a very expensive program.

ARMS CONTROL AND SDI

Some critics of the committee's strategic defense package claim "this will destroy the ABM Treaty." Mr. President, it is time to end our dependence on a doctrine of mutually assured destruction and time to start defending the American people as the Constitution requires.

It seems some people are more interested in defending the ABM Treaty than the American people.

Mr. President, yesterday in Moscow President Bush signed a treaty with the Soviet Union which will reduce the current Soviet nuclear arsenal by 25 percent. The same agreement requires that we reduce our arsenal by 10 percent. But what does this really mean?

Since 1985, the Soviet Union has produced and moved into their military arsenal 715 intercontinental ballistic missiles; the United States has produced only 68. The Soviets have produced 450 bombers during this same period of time. The United States has manufactured only 104.

Simply put, we are being outproduced. This bill does very little to address this inequity. We should welcome the changes in the Soviet Union, particularly their reduction in military adventurism; however, we should be very cautious that we do not become the canary who was seduced by the cat. Real arms control is positive, but arms control without verification is destabilizing.

THE BASE CLOSURE PROCESS

Mr. President, last year's bill contained authority for the Base Closure Commission to recommend closure of bases all around the country. This bill continues this process.

Earlier this year, the Commission conducted exhaustive public hearings on the future of this country's basing infrastructure. The Commission held 28 hearings across the country, visited 47 military installations.

After the dust settled, the Commission recommended to the President a list of 36 bases for closure and 43 bases realigned. Under Chairman Courter's guidance, the Commission fulfilled their charge admirably. But it was not a painless process.

Thousands of jobs will be lost. Countless communities will endure economic depression and hardship. All as a result of the Congress' determination that we did not need to maintain our capability and size.

Mr. President, I believe we are acting precipitously and I fear that the day will come when the error of our flawed decision will become evident. We continue to cut too much and too fast.

BASE CLOSURE ACCOUNT FUNDING

Mr. President, this bill contains over $700 million dollars to fund the closure of bases in this country. During committee deliberations, Mr. President, I pressed for clear reporting and close scrutiny of how these funds were being spent. I was not fully successful.

I am convinced that this $700 million is a pair of baggy pants covering an overweight, out of shape, and poorly disciplined bureaucracy which has very little—if any—oversight. At my urging, the committee included in its report a distribution of the military construction funds included in the base closure account, as requested in the budget.

I was not able, however, to get a clearly defined reporting, by project or site, of all environmental cleanup funds paid from the base closure account listed in the report.

In order to clarify for the record the content of the funds requested and authorized, by site, I ask unanimous consent that the document I send to the desk be printed in the RECORD at the conclusion of my remarks. I urge my colleagues to review the uses of these funds carefully. I think you will find the information enlightening.

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

(See exhibit 1.)

Mr. LOTT. In conclusion, Mr. President, I do believe we have the makings of a good defense bill. It is not perfect, but it is certainly better than the House's bill.

The question remains: When the Senate concludes floor debate on this bill, will we still have the makings of a good bill? Will we have a watered down weak attempt to preserve the status quo or will we use vision and show some rare leadership?

Are we going to defend the ABM Treaty or the American people? Are we

going to meet our responsibility or duck it? Mr. President, I urge my colleagues to meet our challenge squarely and support this bill.

EXHIBIT 1

BRAC I—ENVIRONMENTAL RESTORATION

| | Fiscal year— | | | |
|---|---|---|---|---|
| | PB 1992 | SASC 1992 | PB 1993 | SASC 1993 |
| Army: | | | | |
| Pueblo Depot, CO | 3,270 | 3,350 | 3,500 | 3,400 |
| Lexington-Bluegrass Depot, KY | 1,020 | 1,000 | 2,000 | 2,000 |
| Army Matls Tech Lab, VL | 26,400 | 26,200 | 22,700 | 22,500 |
| Jefferson Proving Grounds, IN | 3,861 | 3,861 | 0 | 0 |
| Umatilla Depot, OR | 10,220 | 10,200 | 10,400 | 10,300 |
| AMC Other Properties, VL | 14,389 | 17,998 | 2,026 | 5,150 |
| Fort Dix, NJ | 14,700 | 14,700 | 2,400 | 2,430 |
| Presidio of San Francisco, CA | 8,970 | 8,970 | 3,900 | 3,900 |
| Hamilton Army Airfield, CA | 645 | 645 | 4,225 | 4,225 |
| Fort Sheridan, IL | 2,390 | 2,350 | 3,500 | 3,500 |
| Fort Douglas, UT | 30 | 40 | 250 | 250 |
| Forts Meade/Holabird, MD | 32,390 | 32,300 | 16,100 | 16,100 |
| Forts Devens/Huachuca, MA/AZ | 10 | 0 | 0 | 0 |
| Cameron Station, VA | 230 | 200 | 5,375 | 5,375 |
| Stand Alone Housing, VL | 1,250 | 1,250 | 0 | 0 |
| Asstd Properties, VL | 1,920 | 1,905 | 2,249 | 2,239 |
| Letterkenny Army Depot, PA | 20 | 0 | 0 | 0 |
| Total | 121,715 | 124,969 | 78,625 | 81,369 |
| Naval Station, Brooklyn, NY | 1,455 | 1,755 | 8,500 | 7,275 |
| Naval Station Ingleside, TX | 140 | 140 | 0 | 0 |
| Naval Station Puget Sound, WA | 675 | 1,995 | 500 | 3,700 |
| Naval Station, San Francisco, CA | 250 | 0 | 0 | 0 |
| Naval Hospital Philadelphia, PA | 1,500 | 8 | 13,600 | 11,625 |
| Naval Station Treasure Island, CA | 0 | 102 | 0 | 0 |
| Total | 4,020 | 4,000 | 22,600 | 22,600 |
| Air Force: | | | | |
| Pease AFB, NH | 11,740 | 12,750 | 7,430 | 7,150 |
| Mather AFB, CA | 8,280 | 4,820 | 1,790 | 7,635 |
| Chanute AFB, IL | 14,230 | 27,617 | 1,150 | 45,730 |
| George AFB, CA | 6,160 | 34,950 | 1,250 | 1,350 |
| Norton AFB, CA | 9,690 | 7,740 | 20,080 | 7,290 |
| Total | 50,100 | 87,877 | 31,700 | 69,155 |

Mr. LOTT. Mr. President, briefly on the Bumpers amendment, I urge the amendment be defeated. This is very carefully crafted legislation. It allows us to go forward with a land-based defense. It allows for space-based sensors. It is probably going to lead to some modification of the ABM Treaty, and I think it should. It does not abrogate it. It does not violate it. But it allows us to go forward and get something for our investment.

I wonder why the Senator would want to just reduce $1 billion. If he thinks we do not need these land-based or space-based sensors, then let us wipe it all out. Why have any of it? Why only cut it $1 billion?

My point is now that we have made a substantial investment in this, that we are ready to go forward with getting some benefits, both with the capability for the sensors and the research and development to explore the potential for space-based defenses, that are not included in this language. We are finally to the point where we can actually get something out of all the research and development that has been done and all of the money that has been spent.

Also, for the life of me, I cannot understand the great concern about a defensive system. When I go home and I try to explain to people that we have this MAD, this mutually assured destruction. MAD—the notion that we must hold the population of each superpower at risk so that we can avoid war. I try to explain that MAD will continue—even in spite of the START Treaty—an awful lot of very dangerous missiles aimed at each other, they do not understand why that makes sense. I don't believe it does.

They do understand when you say you would like for us to have a defensive shield, a land-based defense. That is what we are talking about here. And yet you would think we were going to cause a massive war because we are proposing to move forward with a land-based ABM defense system. That is what is in the language in this bill, and that is what we should support.

So I urge my colleagues to oppose this amendment, support this very carefully crafted bill and let us go forward with a reasonable defense plan for the future. I yield the floor.

Mr. EXON addressed the Chair.

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

Mr. EXON. How much time does the opposition have to the amendment offered by the Senator from Arkansas?

The PRESIDING OFFICER. The Senator has 37 minutes, 52 seconds.

Mr. EXON. I yield myself such time that might be necessary, and then I will yield 10 minutes to the Senator from Alabama who is waiting to talk on this measure.

The Senator from Arkansas has indicated that he is somewhat short on time and wondering if we would be able to award him 12 to 13 minutes of our time, which I think we might be able to do, depending on how long some of these talks last. I am going to try to keep mine to somewhat of a minimum, as did Senator LOTT on remarks he just made.

Mr. President, the amendment offered by the Senator from Arkansas has a lot of popular appeal, but I suspect if we take a careful look at the proposition, notwithstanding what I know is a very sincere belief in this area by the Senator from Arkansas—because he has made similar excellent speeches and similar excellent reasoning on SDI amendments in the past—we will not accept this amendment for the very simple reason that while it has some attractiveness to it, it ignores completely the tremendous hours of hard work that were put in on the Armed Services Committee in coming up with the rather delicate balances and compromise that was necessary to get a bill reported out of the Armed Services Committee because—like on the Senate floor—there were sharp differences of opinion inside the Armed Services Committee, some of them shared and enunciated so well on the floor by the Senator from Arkansas. But just as eloquently there were those on the opposite side of the issue, who brought forth their opposition to the basic thrust of the amendment offered by the Senator from Arkansas.

The Senator from Mississippi just indicated that the SDI amendment passed out of the committee on the 16-to-4 vote. That is correct. But it is also correct to say that that was not easily done. In fact, when the SDI funding measure, as part of the overall defense authorization bill, was offered inside the committee the first time in essentially the same form as it was passed out on a 16-to-4 vote, it lost. It lost, Mr. President, and I believe, if I remember correctly, there were 9 votes for it and 11 votes against it.

It was only after a lot of very difficult compromises and discussion on a broad view and a wide range of areas that we finally got the 16-to-4 vote. I am not sure that the 16-to-4 vote adequately represents the agreement that was passed on this. I suspect that there are more than four votes inside of the Armed Services Committee probably more in keeping with the amendment offered by the Senator from Arkansas. At the same time, I can say that I am sure that a majority, if not a substantial majority, of the Armed Services Committee would be against the amendment offered by the Senator from Arkansas on its merits standing alone.

We have had a lot of washing on this ground. We are debating in essence what we have debated on previous SDI amendments. And I would just like to briefly express the feelings of this Senator on this whole matter.

I am not as sure, and I am not as pure, as some Members of the Senate seem to be on what the right level of funding is for SDI. But this, as I state the following, Mr. President, is my belief. I am not sure what the proper funding level should be, but I am sure that the funding level recommended by the Armed Services Committee is a reasonable one to look to the future.

I suspect that the Senator from Mississippi, and several Senators on both sides, Democrat and Republican alike, inside the committee, would like to see a somewhat higher number on SDI than this, and fought very hard for a higher number. Therefore, I think we will be sticking together basically on this issue as far as the committee is concerned.

I say though as a matter of information to my friend from Arkansas that this Senator will be offering two amendments not on SDI, but on the rail-garrison MX and also on the SRAM-T, striking funding in massive amounts for those two programs. I hope and expect that I will have the

support and help from my friend from Arkansas on those amendments.

So this simply indicates that this Senator from Nebraska, a senior member of the committee, does not go along with all of the funding mechanism, but I happen to feel that the rail-garrison MX that I will be getting into in a separate amendment at a later time and SRAM-T, are savings that we can make along the lines of savings necessarily being made that have been adamantly and eloquently advanced by the Senator from Arkansas.

Back to SDI, I am not sure what the real level of funding is. I am certainly not prepared at this time to break out of the ABM Treaty, nor am I satisfied, nor will I support zeroing out, or crippling beyond a reasonable amount, the funds provided for SDI for the simple reason that I am not about ready to say to the people of the United States—or to the people of the Soviet Union—that the United States of America is going to ignore the continuing research and development, and that we know going on inside of the Soviet Union is some type of an SDI, whatever their version in the Soviet Union is called.

Another way to put that would be simply to say we have put Brilliant Pebbles, which is embodied in the GPALS recommendation to the committee by the administration, on the back burner. We have not broken out of the treaty as has been alleged on this floor time and time again in previous arguments on SDI. We have put Brilliant Pebbles, which is the heart and soul of GPALS, on the back burner.

I suspect that the Senator from Mississippi does not like that. But I think the Senator from Mississippi would agree that, whether he likes it or not, the fashion of the SDI proposal that came out of the committee does indeed put Brilliant Pebbles on the back burner without killing it.

To put it another way, what we are saying is that we are not breaking out of the treaty now. We are not deploying or proposing a deployment that would break out of the treaty. We are simply saying that we think it is important to continue research and development in the area of Brilliant Pebbles, or programs aligned closely with it, and make a decision on whether or not we should go ahead with that. Hopefully, with an accommodation from the Soviet Union by renegotiation of parts of the ABM Treaty, which we suspect the Soviets would be willing to do, given the fact that basic emphasis of the program that we are going forth with is to have one land-based system to direct itself against limited attacks—essentially from Third World countries or accidental launches from the Soviet Union.

Once again, we do not claim nor do we say that this is the answer to any threat from the Soviet Union. To the contrary, we simply are saying—that is why I think it is unfair to say that we are trying to break out of the ABM Treaty—all that we are basically doing in this bill, Mr. President, is to say once again that we build one facility, probably in North Dakota, at Grand Forks, which is in full compliance with the treaty. To give us now what the Soviet Union has under the treaty already around the Moscow area, the United States made an option some time ago that they would not go ahead with that. We are saying this is the time to move forward with some kind of a limited protection for the United States that we think is very reasonable.

If we continue down the road that some are preaching on the floor of the U.S. Senate—by that I am not directly implying that the provision of the Senator from Arkansas does this, but it starts us down that road—to say we are going to just continue to ignore the threat to the United States, or to the Commander in Chief of the United States, this President, or succeeding ones, to have them exposed to a Third World power that says they have a missile within range of the United States, and that if the President does not do this, does not do that, they very likely will launch it. This is insurance that we are buying. It is not cheap insurance. But I think it is necessary insurance.

Mr. President, I reserve the remainder of my time. I yield 10 minutes, and hope that he can shorten that if possible, to the Senator from Alabama.

Mr. HEFLIN. Mr. President, I rise in opposition to the amendment to reduce the funding for the strategic defense initiative. As I have said several times before, SDI represents a welcome shift in our strategic policy from one that relies on Mutually Assured Destruction [MAD]. It is my opinion, therefore, that this amendment is ill advised at a time when we finally seem to be approaching a consensus on the direction of the program.

The administration requested $5.2 billion in its 1992 defense budget for SDI in order to build upon the 1991 program. The Armed Services Committee has already cut the program to $4.6 billion to fund other programs. I believe the committee's recommendation is the lowest acceptable funding if we are to continue on with the program.

One of the most common arguments against SDI is that we have spent over $20 billion, and now have nothing to show for it. With the passage of this bill, this argument will be put to rest once and for all.

For the first time, funds are provided to begin preparation for the initial treaty-compliant deployment site the money we have spent thus far developing ground-based missile and radar systems will be put in use in the next 5 years at Grand Forks. The money we have spent on space-based sensors will create satellites that greatly increase the effectiveness of our defenses, and the money that we spent on Brilliant Pebbles has not been wasted either.

In this bill, the controversial Brilliant Pebbles program has moved back into the follow-on technologies. This does not mean that funds should not be spent on Brilliant Pebbles. It does not mean that Brilliant Pebbles will never be deployed. What it means is that the supporters of SDI have recognized that the deployment of a limited protection system is more important than any one proposed interceptor. Brilliant Pebbles and the other follow-on technologies have our continued support as a hedge against an uncertain future.

Mr. President, some have questioned whether we need to spend at this pace and if this is the time to begin deployment. As others have said, the CIA estimate is that by the year 2000, at least 20 nations will possess ballistic missiles. Keeping pace with this proliferation are ongoing efforts to increase their range and lethality, including development programs to arm them with chemical, biological, and nuclear warheads.

We have made great progress in just a short period of time. In the period of time from 1983 up until this date, a number of fabulous developments have occurred. The ERIS interceptor, which to me proved the effectiveness of the concept that a bullet can hit a bullet was most dramatic. By analogy instead of being able to hit a squirrel, which you might be firing at in the hunting situation, in the right eye it came so close that it hit it in the left eye. It was only a few inches off target. The target ICBM was fired and intercepted after it traveled 4,400 miles and was hit on a range in the neighborhood of 150 miles above the Earth at Kwajalein. That shows, of course, what has happened and what can be developed in a short period of time.

During this time, ballistic-missile proliferation has continued unabated. I fully support every effort to arrest this trend through diplomatic means, but common sense says that one of the best ways to prevent the proliferation of these weapons is to produce systems that will make them ineffective, so that they will be less attractive to potential buyers.

Some of my colleagues have stated that there is no real Third World ballistic missile threat because these countries could more easily deliver a nuclear weapon to U.S. soil by boat or civilian aircraft. They correctly state that the strategic defense initiative offers no protection from these threats. They are incorrect, however, if they believe that other parts of our strategic defenses are not now being used to protect us from just these nonmissile nuclear threats. Our national assets in the sky detected the U.S.S.R. shipping

ballistic missiles to Cuba in 1962. Our military satellites are far more capable now. Furthermore, every year we spend more on our intelligence agencies than we have spent on SDI since its inception. A plan by a foreign nation to ship a nuclear weapon to the United States would have the telephones ringing off the hook at the CIA headquarters, as informants try to be first to sell us the news.

Representative ASPIN, the chairman of the House Armed Services Committee, has stated that for the next 5 yerars, there is no ballistic missile threat to the continental United States from the Third World. After this, he states that we will be in a gray period. He therefore recommended that SDI Program give us a deployment option so that we can meet this future threat. I basically agree with him.

After reading and hearing some other Members' counter arguments, you would think that until we are actually facing a threat, there is no need to deploy an ABM system. Perhaps these people are confusing the proposed 5-day waiting period on handguns with the 5-year deployment time of a single site ABM system. If we are to be prepared for the future, or even to have the option to deploy a system, we must begin now.

The SDI Program simply cannot proceed on schedule with vital elements of the program either missing or delayed, which will happen if this funding cut is approved. Therefore, I urge my colleagues to reject this disabling amendment and keep the SDI budget at the $4.6 billion mark established by the Senate Armed Services Committee.

As a final argument, I feel we must provide our conferees with the negotiating room necessary to prevent a serious budget catastrophe to the program. I am not pleased by this particular line of reasoning, but because of the low funding level approved by the House, we are forced to proceed into a conference in this manner. I would, however, say to the distinguished chairman of the Armed Services Committee that this bill he so ably prepared is far too important to risk veto because of a bad compromise with the other Chamber. While I realize that budget pressures are severe in the upcoming fiscal year, we simply cannot afford to cut into a defense program with such far-reaching promise.

On April 27, 1983, I also spoke about the Strategic Defense Initiative, just formed by President Reagan. In this speech I encouraged the President to proceed on the course the Senate has finally adopted this year. For its historical interest, I ask unanimous consent that the text of my April 27, 1983, floor statement be printed in the RECORD at this point.

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

[From the CONGRESSIONAL RECORD, April 27, 1983]

EVOLUTIONARY DEVELOPMENT OF STRATEGIC DEFENSE SYSTEMS: A CONCEPT WHOSE TIME HAS COME

Mr. HELFIN. Mr. President, I sincerely believe that an objective examination of President Reagan's recent call for the development of strategic defense systems will disclose that this is a concept whose time has come.

Once past the emotional reactions of those who are tied to the strategic doctrines of the past, this new approach may, indeed, lead to an ultimate reduction in offensive missiles on both sides.

For too long we have relied on strategic policy based on the threat of retaliation rather than a commitment to self-defense. I have wondered ever since the signing of the ABM treaty in 1972, as I asked anew in remarks to this body last December 18, what could be more stabilizing than the ability to defend one's homeland against nuclear attack?

Yet, many of those who are most vocal through the media continue to insist that defense would touch off a new arms race by raising fears that one side was preparing to attack and then defend itself against retaliatory attack. Defense, in fact, is not provocative—it is the opposite. If each side neutralizes the other's offensive capability, the threat of aggression must be reduced. The U.S. history discloses proudly that ours is not an aggressor nation. But several times we have been caught, with almost tragic results, with our guard down.

Still, there are numerous critics who suggest that ballistic missile defense (BMD) is destabilizing. Their arguments should be challenged not only on first principles, but on the grounds that major reductions in offensive weapons are made more feasible if such weapons are protected by BMD.

It is not simply how many strategic weapons are allowed on each side, but how survivable those weapons are. Therefore, we must see to it that a strategic defensive policy that is basically conducive to arms control is not made to appear as the reverse.

I am convinced that it was our technical superiority in strategic areas which induced the Soviets to agree to the ABM treaty, as well as SALT I. As I noted in my remarks in December, when the ABM treaty was negotiated it was assumed major reductions in offensive ballistic missile forces would be shortly forthcoming. Instead, the Soviets stepped up their strategic programs on all fronts and, today, our land-based ICBM force stands vulnerable to a first strike. Vulnerability, I submit, is the most provocative and destabilizing condition of all, encouraging, at the minimum, international adventures backed by the threat of a first strike.

The ABM Treaty permits limited deployment by both sides, and the Soviets have a system deployed around Moscow. However, Congress decided in 1976 to phase out our deployed site at Grand Forks, S. Dak. Meanwhile, the Soviets have continued with a system-level program, at expenditures three times greater than ours, which we assume could be rapidly deployed in the future. The United States has pursued a modest R&D ballistic missile defense (BMD) program since the early 1970's, progressively developing means to defend our ground-based ICBM force and developing technologies which have provided remarkable advances for future defensive options.

I agree with President Reagan that we need to step up the pace of R&D on advanced long-range BMD concepts which will fully challenge our Nation's creative scientific capabilities for success and breakthroughs as well as our political willingness to seek visionary solutions. In this connection I was one of the first Members of this body to speak out on the potential use of directed energy technologies, such as high-energy lasers, for future defensive weapons.

In the future, we should be able to use ground-based or space-based, high-energy lasers to destroy ballistic missile targets, as well as other offensive targets. I have felt for some time that we need to accelerate our efforts in the development of this technology. However, one of my primary concerns has been the fragmentation and lack of coordination among the various Government agencies of the current research and development in the area of directed energy.

This concern was amplified as a result of hearings that I chaired in late 1979. The purpose of these hearings was to provide a broader review of the highly diverse, important, and rapidly developing laser technology. From these hearings, I determined that we did not have the proper environment to focus this technology. Therefore, in the last Congress, I introduced legislation calling for a Laser/Particle Beam Institute to provide a long-range program in this area and serve as a coordinating and managing body for those Government agencies involved in laser/particle beam research and development.

I have recently been encouraged by what appears to be better coordination of these efforts. However, because of the importance of this technology, the Science, Technology, and Space Subcommittee plans to conduct further hearings on this issue later this year.

While the President's March 23 announcement properly emphasized the more advanced, long-term BMD concepts, I would encourage him to seriously consider an evolutionary approach that also would include more mature, nearer term BMD concepts.

I have followed with great interest the progress in Army BMD systems and technology development centered at Huntsville, Ala. This program has made dramatic strides in recent years over a broad spectrum of systems.

As early as the 1960's, BMD demonstrated essential strategic defensive systems technologies, including phased array radars and Sprint-class interceptors. By the 1970's the program technologies were developed to enable defense against sophisticated missiles in the terminal stages of attack through the use of complex data processing, and discriminating technologies, and quick-response interceptors. The program evolved in the 1970's with the development of onboard data processing and long wave infrared sensors for early identification of targets outside the atmosphere. Today, BMD is demonstrating advanced sensors and data processing and smart missiles capable of intercepting incoming missiles with nonnuclear warheads. Programs also are already underway in the nontraditional technology areas of directed energy weapons.

These technology successes provide vast encouragement to the hopes for a successful strategic defense in the future and can be demonstrated, with the option for deployment, on an evolutionary basis while futuristic space-based systems concepts are maturing. Skeptics have dismissed the long-range portion of this thinking as a "Star Wars" fantasy, but I believe history will prove them to be wrong.

Secretary Caspar W. Weinberger recently noted:

Perhaps one reason for the skepticism with which some have greeted this initiative is due to misunderstanding. Many would have you believe that we seek to develop a single system which can intercept and defend flawlessly against all missiles and all attacks. We know there is no such "magic bullet." What we are trying to develop first is a defense network—a series of systems, not necessarily based on the same technology or physical principles—which taken together will provide a reliable defense against nuclear ballistic missiles.

The concept we will need to perfect is not dissimilar to the one we now employ to defend our fleet against tactical missile attack. The layered fleet defense system consists of F-14 fighters and Phoenix Missiles at long ranges, the Aegis Cruiser at medium range, and close-in weapons systems. All are under control of computers which keep track of dozens of incoming missiles, and direct interceptors to destroy them. The ballistic missile defenses we seek to build must do these functions also, not against dozens of targets, but against thousands and at vastly greater ranges.

Secretary Weinberger was referring to a defense network, which I believe to be consistent with BMD's layered defense concept, where defense is possible in various regimes of an attacking missile's trajectory.

My interest in also considering more mature BMD concepts is based on several compelling factors that are consistent with the President's policy initiative. They can be fielded earlier and they can be securely based on our own soil. They would pose no threat for any use other than purely defensive objectives, and they would effectively complement any advanced systems that may be deployed later.

I am convinced that we should carefully and objectively evaluate the President's call for the development of strategic defensive systems as a means of making nuclear weapons impotent and obsolete. If we raise ourselves above partisanship, as indeed we must, and look with open minds at what could represent a more stabilizing strategic policy, I believe we will come to agree that this initiative can signal a change in America's strategic policy that is likely to live in history as a dramatic turning point toward world peace. It puts us on a course that is fundamentally more secure and humane.

I believe America's scientists and engineers, who have brought this Nation to preeminence in world technology and to the Moon and back, can succeed in developing the defensive systems to make this peaceful vision to reality.

U.S. SENATE,
*Washington, DC, May 3, 1983.*

Hon. CASPAR W. WEINBERGER,
*Secretary of Defense, Department of Defense, The Pentagon, Washington, DC.*

DEAR SECRETARY WEINBERGER: I am enclosing a copy of a letter I am sending today to President Reagan regarding our country's ballistic missile defense program. I am also enclosing a copy of a speech I recently delivered to the Senate on this same topic.

Within the next few days I will be calling you to discuss my proposals for an evolutionary approach to ballistic missile defense. As you will note from my letter to President Reagan, this approach includes a continuation of our emphasis on our current technology being developed by the ballistic missile defense program as well as a national commitment to such futuristic development technology as space based lasers and particle beam weapons.

I look forward to discussing this with you in more detail.

Sincerely yours,

HOWELL HEFLIN.

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U.S. SENATE,
*Washington, DC, May 3, 1983.*

The PRESIDENT,
*The White House, Washington, DC.*

DEAR MR. PRESIDENT: I commend you for your call for the development of strategic defensive systems to make nuclear weapons impotent and obsolete. This is a concept whose time has come. For too long we have relied on strategic policy based on the threat of retaliation rather than a commitment to self defense. I have wondered ever since the signing of the ABM Treaty in 1972, as I asked anew in Senate remarks this past December, what could be more stabilizing then the ability to defend one's homeland against nuclear attack? I believe that it was our technological superiority in the field that induced the Soviets to agree to the ABM Treaty, an agreement that should not now deter us from developing the means for an effective defense.

I agree with you that we need to step up the pace of research on advanced ballistic missile defense (BMD) concepts which could one day bring about vast reductions in offensive missiles. In this connection, I was one of the first members of this body to speak out on the potential importance of directed energy weapons and to advocate more centralized management of accelerated research for high-energy lasers. The results of hearings I chaired on this subject confirmed my conviction that there is great promise for this class of BMD systems.

I have followed with great interest the progress in BMD systems and technology development centered at Huntsville, Alabama. This program has made dramatic strides in recent years over a broad spectrum of systems. While your announcement on March 23 properly emphasized the more advanced, long-term BMD concepts. I would encourage you at this state to seriously consider an evolutionary approach that would also include more mature, near-term BMD concepts.

I envision the BMD of the future to evolve from a series of systems and technologies developed during the 1980's and 1990's, including advanced sensors and data processing and "smart" missiles capable of intercepting incoming missiles with non-nuclear warheads.

My interest in also considering more mature BMD concepts is based on several compelling factors that are consistent with your policy initiative. First, they can be fielded earlier and they can be securely based on our own soil. They would pose no threat for any use for other than purely defensive objectives, such as defense of our ICBM forces and key command and control centers. Second, they would effectively complement any advanced systems that may be deployed later.

With respect to the arms control implications of your policy initiative, I'm sure we will hear many critics who contend that BMD is destabilizing. They must be challenged not only on first principles, but on the grounds that major reductions in offensive weapons are made more feasible if such weapons are protected by BMD. It is not simply how many strategic weapons are allowed on each side, but how survivable these weapons are. Therefore, we must see to it that a strategic defense policy that is basically conducive to arms control is not made to appear just the opposite.

Mr. President, you have signaled a change in strategic military policy that is likely to live in history as a dramatic turning point in national security. It puts us on a course that is fundamentally more secure and humane. I share your confidence that our scientists and engineers will succeed in developing the defensive systems to support your initiative. I will lend every effort to assist you in seeing this worthy venture through to success. I have enclosed a copy of the speech I delivered to the Senate on this issue.

Sincerely yours,

HOWELL HEFLIN.

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THE SECRETARY OF DEFENSE,
*Washington, DC, June 5, 1983.*

Hon. HOWELL HEFLIN,
*U.S. Senate, Washington, DC.*

DEAR SENATOR: I read with great interest your letter to the President expressing your support of his defense initiative and your recently delivered Senate speech on defense systems. The ideas you expressed are most compelling. I share your belief, as does the President, that an effective defense against ballistic missiles could reduce our dependence on offensive force retaliation and increase stability. I also would agree with you that we need to look at all technologies that could prove useful in our efforts to realize such a defense system, including those that are more mature, and not just those advanced technologies that clearly will require many years to develop.

In support of this view, the President has directed that an extensive study, utilizing the talents of experts both within and outside Government, be conducted to identify those technologies that hold out the most promise for satisfying our goal of eliminating the threat of nuclear-armed ballistic missiles.

Because this is an extremely important issue that could well have a revolutionary impact on our national security, I appreciate the fact that you took the time to share your ideas with me. In view of your leadership in the Congress on this crucial issue, I look forward to working closely with you now and in the future.

Sincerely,

CASPAR W. WEINBERGER.

The PRESIDING OFFICER. Who yields time?

Mr. LOTT. Mr. President, I yield 8 minutes to the distinguished Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina has the floor.

Mr. THURMOND. Mr. President, I rise in opposition to the Bumpers amendment. Senator BUMPERS' amendment would reduce funding for the SDI Program by $1 billion at a time when we are about to make critical decisions on the deployment of an anti-ballistic-missile system to protect the American people from missile attacks.

Mr. President, during the Persian Gulf conflict we saw live in our living rooms the dramatic psychological and political impact a missile attack can have on a nation. Despite the success of the Patriot missile system and the dedication of vast resources to locate the mobile Scud missile systems, we could not stop the Scud attacks on Israel and the forces in Saudi Arabia. Indeed, the greatest loss of life from a single event occurred during the Scud missile attack on a U.S. barracks, killing 28 Americans.

One of the most important lessons of the Persian Gulf war is that we must develop an effective defense against ballistic missile attacks, both for our forward deployed forces and for the protection of our citizens. Iraq was only one of many Third World countries that possesses or has the ability to develop ballistic missiles. The Director of Central Intelligence estimates that, by the end of the century, between 15 and 20 developing countries will possess ballistic missile capabilities; at least six developing countries will have ballistic missiles with ranges of up to 1,800 miles; and at least three of these countries may develop missiles with ranges up to 3,000 miles that could directly threaten the United States.

To illustrate the threat, I direct my colleagues to a quote from a speech by Colonel Qadhafi, the terrorist ruler of Libya: "If they, the United States, know that you have a deterrent force capable of hitting the United States, they would not be able to hit you. If we had possessed a deterrent—missiles that could reach New York—we would have hit it at the same moment. Consequently, we should build this force so that they and others will no longer think about an attack."

Colonel Qadhafi's threat was in response to the United States' reprisal raid on Libya in 1986. The threat is not yet credible, but Libya is known to be developing or trying to produce such a missile capability.

Mr. President, the Armed Services Committee has set a goal to deploy an anti-ballistic-missile system, including one or an adequate additional number of ABM sites and spaced-based sensors, capable of providing a highly effective defense of the United States against limited attacks of ballistic missiles. To support this goal plus robust funding for continued research and development of Brilliant Pebbles space-based interceptors and other follow-on technologies necessary to provide future options for protecting the security of the United States and our allies, the Committee authorized $4.6 billion for fiscal year 1992.

For the past 8 years, taxpayers have spent approximately $22 billion on SDI research without a clear concept of where the program was heading. The Armed Services Committee has now taken the bull by the horns and has recommended a blueprint and timetable for developing a cost-effective and operationally effective defense against accidential or unauthorized missile launches or ballistic missile attacks by a terrorist governments. Senator BUMPERS' amendment will gut the Armed Services Committee's bipartisan plan and preclude the Nation from deploying the missile defense it needs to protect its citizens.

Mr. President, I urge my colleagues to vote against this amendment. The Nation needs a ballistic missile defense now, more than ever before.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Mr. President, I yield 10 minutes to the Senator from Tennessee.

Mr. GORE. Mr. President, I wish to thank my distinguished colleague and neighbor from Arkansas and compliment him on his amendment and the way in which he has presented it to the Senate. Knowing the time pressures that he has, I will attempt to conclude my remarks in less than the 10 minutes he has generously given me, especially because I have said my piece at some length on the underlying subject already.

But I would like to characterize the true nature of the Bumpers amendment. I think everyone here should be aware of the fact that the funding levels which will be left in the program if the Bumpers amendment is adopted will be 20 percent higher than the funding level in the program this fiscal year. The Bumpers amendment actually allows for a generous increase in funding for SDI, but they are nonetheless lower than the enormous sums allocated in the committee bill.

Mention has been made of the need for a bill to take to conference that will give the Senate negotiators—and I will be a member of that conference, and I appreciate the concern that some of my colleagues on the committee have expressed. It is a legitimate concern. That might have been an argument for voting against the Harkin amendment.

I have always voted against an amendment like the one proposed by my colleague from Iowa. I voted for it this year because I think the issue has been so crystalized that I could not do otherwise. But anyone who voted against the Harkin amendment out of concern that the committee needs ample flexibility in conference with the funding level that might be higher than they would otherwise want to see can vote for the Bumpers amendment. It authorizes sums higher than those authorized by the House committee and again 20 percent higher than those that are currently in law in this fiscal year.

So really what this comes down to is whether or not we want to go way over and above what I believe is a rational spending level, what the committee would authorize as a 50-percent increase in funding for SDI over this year's level.

Mr. President, as I think about the course of the debate we have had here in this Chamber these last 2 days, especially regarding the series of amendments that were offered by myself, Senator BINGAMAN, Senator LEVIN, and Senator BIDEN, I am struck by the way in which the nature of the underlying issue has changed somewhat, or at least I have been struck by the way in which advocates of the committee position characterized the real meaning of what the committee's language actually does.

Unless my ears are deceiving me, it seems that the Senate has been told that nothing in the bill constitutes more than license for the Department of Defense to think up and draw up plans relating to the possible deployment of an ABM system. Nothing commits us to deployment in this, we are told.

The leaders of the committee have emphatically told us with particular clarity during the debate over the Levin-Biden amendment that the Department of Defense may not conduct any testing or development, much less deployment, of anything that is contrary to the ABM Treaty. That much is clear. It was on that basis that they agreed to accept the Levin-Biden amendment.

But where are we now? I believe that as a result of all these clarifications and assertions it is fair to say that the policy language of this bill is essentially without legal force. It expresses an interest on the part of the Congress and it asks for plans, but it does not authorize anything beyond those plans other than a continuation of research and development along a variety of paths, all of them to be kept strictly clear of the ABM Treaty, although the President will presumably seek to change that treaty. But that, too, is just another piece of advice in the bill the way it has been characterized to us.

So the real meaning of this bill is in its funding totals. That is where we are. And now comes the Bumpers amendment.

The funding totals in the bill reflect what used to be appropriate for GPALS. There is, as we all know, a huge amount of money for Brilliant Pebbles. And yet one thing that this legislation tells the Department of Defense is that in their planning Brilliant Pebbles may no longer be included in the architecture and the plans of the system that they are to think about deploying. The planning is now limited to a system of one or more ground-based installations.

Under the circumstances, this bill, and indications that the administration embraces the language of the bill on SDI, renders that whole program a kind of headless chicken. GPALS was the head of the chicken, but Congress has chopped it off. But the SDI office is still able to flap its wings and run about and study and think and plan.

In short, given the fact that the GPALS Program no longer exists as the front-running element of SDI should the committee language be adapted, and given the fact that all other aspects of the program now stand in some question, the funding levels in

the committee bill are obviously inappropriately high.

Senator BUMPERS proposes a reduction that would bring those totals more closely into line with reality, the reality that the SDI Program at this moment has no internal definition whatsoever, no mandate, no agreed blueprint. All that big, thick plan that was drawn up and released in the spring of this year is out the window. GPALS is no longer there. Brilliant Pebbles is no longer permitted to be included in the architecture that they are planning.

Well, given that situation, do we want to authorize a 50-percent increase in the funding levels? That, in my opinion, Mr. President, would be totally absurd.

Do we need a robust research and development program? Yes, we do. I have always supported that and I support it now and I support the Bumpers amendment which, let me repeat, authorizes a 20-percent increase over this year's funding level.

In the past, I have resisted voting for major cuts on grounds that some cuts were indeed disabling of research and others too great a handicap to take into conference. This time, however, I feel that funding levels are so substantially out in front of agreed policy that they need to be trimmed back. I therefore intend to support the Bumpers amendment vigorously. It will not disable the committee in conference. It will fully fund theater ballistic missile defenses. In particular, it will cut Brilliant Pebbles back to a level of effort more clearly in line with the new, sharply reduced stature accorded Brilliant Pebbles under the plan authorized in the committee bill.

One more point, Mr. President. Others have made this, and perhaps we are just beyond our capacity to hear it and understand it and absorb it. But we have a $348 billion budget deficit. Interest on the debt will next year surpass defense spending and Social Security as the largest item in the Federal budget. We are looking for places to save.

Given the complete and total redefinition of what this program is all about, given the limits to planning and thinking in the expenditures authorized, can we save a little money by authorizing only a 20-percent increase rather than a 50-percent increase to save a little money for the taxpayers and still provide a robust and adequate program for defenses for this country?

I think the answer is quite obviously yes. I hope my colleagues will agree the answer is yes. I urge my colleagues to vote in favor of the Bumpers amendment.

I yield back some time after all.

The PRESIDING OFFICER. Who yields time? The Senator from Wyoming [Mr. Wallop].

Mr. WALLOP. Mr. President, I yield myself 2 minutes. And I yield myself 2 minutes so that I can indulge myself in this Alice-in-Wonderland debate.

I would say to my friend from Tennessee, while he is fulminating against the funding levels and hoping we achieve those of the Senator from Arkansas, I suggest the Senator's own funding levels of yesterday were precisely those which he now seeks to cut, and says were done without a plan, and criticizes for their excesses. They were my colleague's funding levels of yesterday.

I would also say that, heaven forbid, that as the Senator from Tennessee suggests, SDIO would study, think, and plan. Heaven forbid that our strategic systems would be victims of studying, thinking, and planning.

This thesis of the Senator from Arkansas is real. It basically is, if I cannot take care of you all of the time, I will take care of you none of the time. If I cannot prevent the jet plane from Houston arriving in Arkansas, I will prevent no missile from the Soviet Union arriving in Arkansas. Since one thing is likely to happen.

The thesis of that is to say that there is no reason on God's green Earth for us to have a military capability of any kind because we cannot prevent every eventuality. The whole thesis that has been the underpinning of this argument is the most profoundly quirkish thing.

Let me explain to Americans for a moment what it is we seek to do. Under the ABM Treaty, we are saying to Americans that you are far safer, vulnerable to a Soviet Union, that you are protected from one. Even if we can do it, you are far safer. We do not even think about protecting you. That of and by itself is destabilizing.

So we come to this quirkish moment in time where you try to find just the precise level of incompetence that is satisfactory for stability.

If I do not save enough of you, that is a level of incompetence that is intolerable. If too many Americans die in this limited proposal, even fewer than in that of the Senator from Arkansas, that is not satisfactory. We have to do better. That is why we do not do anything right now, because sooner or later, we will do better.

But on the other hand, if I save too many of you, that is a level of incompetence that is also intolerable because that is destabilizing. Too many Americans live. Oh, my goodness sakes, what will the Soviets think, should they attack us and too many live?

We get to this crazy business of where you try to decide: Protecting against limited attack, that is fine; accidental launch, that is fine. Though who knows precisely whether this thing is coming at you by accident or on purpose?

The most bizzare of all that is insisted upon by those who are fighting this amendment, and has been insisted upon by them from the beginning, is unauthorized launches. Who, with the obligation to provide a defense to the American people, is going to call up and say: Hey, by the way, do you have an effective signed order for this missile? If you do, why, we will let it come.

The purpose of the Senate committee's amendment is to begin to find the time between ourselves and the Soviet Union, how to take care of American people—the Soviets can take care of their own people—against a variety of circumstances. Ultimately, we are following the direction of the President of the Soviet Union, as well as that of the President of the United States—Marshall Akhromeyev, as well as Secretary of Defense Carlucci—that it is now time to devote ourselves to negotiating better and safer circumstances surrounding ourselves, which includes defense.

And the response to those on that side is: There is no set of circumstances under which a satisfactory level of incompetence can be found.

Mr. President, this is not an argument the American people can take in comfort.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Mr. President, I yield the Senator from Tennessee 30 seconds.

Mr. GORE. Mr. President, when I introduced the amendment yesterday, I said at the time I supported lower funding levels and would vote for the Bumpers amendment when it was introduced, but did not include the recommendation for lower funding levels with that amendment so that the Senate might focus just on the policy set. Now we have a chance, having discussed the policy, to talk about the funding levels.

For those who want to pretend that the funding levels do not matter, the deficit does not matter, I am reminded of the line from the song by the rock group Dire Straits, "Denial ain't just a river in Egypt."

We can try to deny the fact that we have a $348 billion budget deficit. We can try to deny interest is going to be the biggest expenditure in the budget. But sooner or later, reality is going to hit and we have a chance in the Bumpers amendment to make a big savings for the taxpayers and reduce the deficit, while still funding a generous increase in research and development funding for this program.

Mr. BUMPERS. Mr. President, I yield the Senator from Minnesota 5 minutes, and hope he can yield part of it back.

The PRESIDING OFFICER. The Senator from Arkansas has 8 minutes and 30 seconds remaining.

The Senator from Minnesota.

Mr. WELLSTONE. I will try to do that. I thank the Senator from Arkansas, and I thank the Senator from Tennessee for his eloquent remarks.

Mr. President, let me not speak to the case for or against the star wars system. We debated that full scale last night. Let me not add to arguments that have already been made about the deficit. Let me talk about this issue in more personal terms for a moment.

We are talking about a 50-percent increase in outlay for star wars. I was a college teacher for 20 years. I traveled around the country, and I meet students everywhere who sell plasma at the beginning of the semester so they can buy textbooks; who work two or more minimum-wage jobs. And I talk to college teachers who say they cannot teach classes late in the afternoon because their students are working.

We do not have the money for Pell grants. We do not have the money for low-interest loans. We do not have the money to support those students, or higher education.

But a 50-percent increase in outlay for star wars.

One-fifth of all the children in this country today: poor. One-half of all the children of color in our country today: poor. Children 10 blocks away from here, no opportunities: poor. Every 7 seconds, a child drops out of school; every 27 seconds a child runs away from home—100,000 children homeless. We do not have the money. But a 50-percent increase in outlay for star wars.

Thirty-seven million people without any health insurance; double that number who are underinsured. Older Americans who live in terror of catastrophic expenses, who will lose all their savings. We do not have the money for any of that.

I met a young man on the north side of Minneapolis 2 weeks ago. I did not know what to say to him. He was in a job training program. The program closed down. He had nowhere to go.

He said to me: "Senator, if I cannot have a job, there is nothing else I can do but go out on the streets."

Invest in people when they are young, or pay the price later. What is going to be the interest on it? High levels of crime and drug addition and illiteracy. But we do not have the money for any of that. But a 50-percent increase in outlay for star wars.

What is going on here in the U.S. Senate? A $350 billion deficit, interest eating up our capacity to invest in ourselves, and I hear so many of my colleagues speaking so self-righteously about reducing the deficit and cutting here and cutting there.

But they do not cut when people have powerful lobbyists to defend them. They do not cut when it comes to people who are well-heeled and have the privilege, and can have their voices heard; no, they never cut there.

Mr. President, I suggest to you that in this time of record deficit, in this time of closing libraries, in this time of State and local governments in fiscal crisis, in this time of high levels of unemployment, in this time when we need to invest in our children and in their future and health care, could we not at least in the name of some fiscal responsibility have yet a small cut in this star wars program?

I support the Bumpers amendment. It is the most modest of the modest proposals that could be made. I yield the remainder of my time.

Mr. BUMPERS. I thank the Senator very much for an eloquent statement. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. KOHL). You have 4 minutes, 40 seconds remaining.

Mr. BUMPERS. Mr. President, I talked with the Senator from Georgia earlier. I have two more people who are looking for 5 minutes each. I wonder if we can extend the time by 10 minutes on each side?

Mr. NUNN. May I inquire first of the Chair how much time there is remaining on each side?

The PRESIDING OFFICER. The Senator from Georgia has 7½ minutes remaining.

Mr. NUNN. How much time does Senator BUMPERS have?

The PRESIDING OFFICER. Four minutes, forty seconds.

Mr. NUNN. How much time does the Senator need?

Mr. BUMPERS. I need an additional 10 minutes to accommodate two Senators.

Mr. NUNN. Mr. President, I ask unanimous consent the Senator be given an additional 10 minutes.

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

Mr. WALLOP. Mr. President, reserving the right to object, and I shall not object, but I will if further request for time is asked.

I will just take this moment to express my regret that earlier in this day, the Senator from Tennessee chose to assert what the Senator from Wyoming thinks instead of letting the Senator from Wyoming assert his own thoughts. It is normally not the custom on this floor. I think it would probably best wait for another time when the Senator is on the floor and let me speak my own thoughts rather than have those asserted and attributed to me.

Mr. GORE. Mr. President, I ask unanimous consent to speak for 1 minute.

Mr. NUNN. Mr. President, is my unanimous-consent request agreed to?

The PRESIDING OFFICER. It is agreed to.

Mr. NUNN. Mr. President, we will have a problem with this bill if we keep agreeing to unanimous-consent requests to extend time. We are giving ample time to begin with. I am not going to object in this case, but this should not be deemed a precedent. We are not going to be able to stretch these. I hope we will not have additional requests.

May I inquire of the Senator from Arkansas, he has one more amendment; is that correct?

Mr. BUMPERS. Mr. President, there is a possibility that amendment will not be offered. I will discuss it during the next rollcall vote.

Mr. NUNN. I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Mr. President, I rise not to speak to the merits of the pending amendment but rather to express my deep respect for my colleague, for the Senator from Wyoming, as I did in the committee deliberations. My words are genuine. The Senator has been a passionate advocate of the SDI Program.

Earlier when I referred to the Senator from Wyoming at a time when he was not on the floor, it was in connection with a pending effort by the leaders of the committee to determine whether or not they would agree to a proposed amendment, an amendment which, it was my belief, the Senator from Wyoming had opposed, in essence, during the committee deliberations. I have frequently heard the Senator from Wyoming talk about his belief that it is not wise for us to constrain our own development policies because of the ABM Treaty, and it was that principle that was at stake in the pending amendment.

I certainly did not wish to mischaracterize the views or beliefs of the Senator from Wyoming in any way. My respect for him is genuine, though we often find ourselves in vigorous disagreement. I enjoy his able advocacy of his positions. I do not believe I mischaracterized the position, and I will be happy to go over the record with my colleague and friend. If I did so, I certainly apologize on the floor. I do not believe I did so, but I will be happy to review the record.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, it has been tradition and I believe it is the privilege of the Senator from Wyoming to express his own views and not have views attributed to him. That was the point I had raised.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Mr. President, I yield the Senator from Washington 5 minutes.

The PRESIDING OFFICER. The Senator from Washington.

Mr. ADAMS. Mr. President, I have spoken before on the SDI amendments, and I speak on this particular amendment, and to the general principle of SDI. I am surprised we are having to debate an amendment to raise additional money for SDI when we have our President in Moscow signing a treaty to reduce nuclear weapons. I am sur-

prised, when we are changing around the world the manner in which we face one another, that we would go back to a program that was conceived at the peak of the cold war.

Those of us who are opposing this increase and this spending for SDI have supported conventional forces. We have our Nation's changing force structure and role in the world. Our armed services will be smaller, we hope, throughout the entire world and, most of all, we hope to reduce these terrible weapons of mass destruction.

But SDI was created as part of a deterrent system. Many of us argued it would never work then, that it in fact would destroy deterrence. This amendment offered by the Senator from Arkansas does not do away with the technology, or with seeing if this world can find a way to control the genie that came out of the bottle with the antiballistic missile and the nuclear warhead and then the MIRV nuclear warhead and God only knows what else has been created in the meantime.

We are trying to control this genie, and these schemes to spend enormous amounts of money on systems that are completely unproven and will not work, undercut those efforts.

It was well stated by the Senator from Arkansas the reason for negotiating an ABM Treaty that said we would not build defenses was to allow us to scale back on building more missiles. It was based on the idea that the two powers could destroy one another and, having this destructive power, neither would act. It is part of the "mutual deterrent" type of confrontation that formed the basis of the cold war.

We face a future that could be very difficult. There will probably be many small and conflicting wars and cultural conflicts and ethnic conflicts. But we are trying to reduce and do away with this system of terror between the two powers. That is the reason that the ABM Treaty exists. That is the reason that we have tried to reduce the number of missiles, and that is why we do not want to launch into an other SDI Program.

One of the reasons that many of us have taken the floor in support of this amendment is that we are here day after day trying to get children immunized against measles, trying to prevent an AIDS epidemic that is spreading city to city trying to provide cancer research so that we can stop having so many people die of breast cancer, cervical cancer, colon cancer. But what we keep leaving, and what kills all of these critical programs, is that we do not have any money.

We are faced with a deficit where our interest payments are greater than the entire deficit under President Lyndon Johnson. The debt is growing. The deficit causes the debt to grow. And if we can just reduce this deficit $1 billion we could save millions, enough money to fund the many programs that I have advocated on this floor.

So that is why we are trying to plead with this committee and plead with our colleagues that this is a time to shape a new force in the world, a smaller force. That is being done, I think well, by Secretary Cheney. But in order to derive any benefit from that reshaping, we must shape and stop this enormous technological dream so that we can take care of our middle-class citizens.

Mr. President, we have gone around and around on ballistic-missile defense in this Chamber for years. I will not dredge up those old battles, but I will reiterate one simple fact: We cannot have it both ways. We cannot support a 50-percent increase over the fiscal year 1991 funding level for SDI, fund all of the domestic programs that are literally crying out for Federal assistance, and reduce the deficit. If we continue to lavishly fund these programs, we will continue to undermine the needs of the working people that form the backbone of our great Nation by increasing the national debt which increases the interest payments which in turn increases the debt. I was here the last time we balanced the Federal budget, and the total Federal spending at that time was less than we spend on interest alone today.

I urge my colleagues to vote for the amendment by my colleague Senator BUMPERS, which would cut SDI funding and contribute $1 billion to deficit reduction. Given the domestic goals that we all want to see achieved, this reduction is a realistic and necessary modification to the SDI plan.

A second Bumpers amendment that I would urge my colleagues to vote for would cut $300 million from brilliant pebbles. To vote for this amendment is to take a crucial step back from an already discredited space-based missile defense system.

The modern SDI concept was conceived by President Reagan to serve as an all-powerful shield from a full-scale Soviet nuclear attack. Even in that era of the evil empire, grave concerns were expressed about the practical impossibility of both developing such a system and protecting against such an attack. Today, the world of Gorbachev and Bush looks different.

Recognizing the changed nature of the threat, the committee's proposal takes a new course on SDI. The system envisioned by the committee does not include the space-based lasers that President Reagan saw shooting down hundreds of Soviet missiles. Instead, the new SDI would rely on ground-based missiles as a means of defense against an accidental launch of very few missiles that could result from a breakup of the U.S.S.R., or a launch by one of the nations currently trying to develop an intercontinental ballistic missile capability.

Even with the committee's new SDI, however, the continued development of space-based sensors to guide defense weapons takes us into a war in space again. The bill's commitment to deploy the proposed system would lock us on to an unconscionably expensive path of massive future funding requests—satellites, antisatellite killers and all the rest. We have already sunk a staggering $20 billion into SDI research and development. I am astounded by the additional moneys this bill would authorize for an SDI system which could, if expanded along the guidelines set forth by the committee, rival the original SDI proposal. It is incumbent on this body to cut this proposal.

The Soviets have said repeatedly that if the ABM Treaty is violated, there will be no START redutions because those reductions are based on mutual deterrence. Are we willing to forgo the historic opportunity the START Treaty offers? Such an approach should be rejected and should motivate all of us to support these amendments.

I urge my colleagues to support these very reasonable proposals to cut SDI spending. We need to send a clear message to the American people that we are for a defense that is strong and effective but that will not bankrupt our severely strained Federal budget.

I thank the Senator from Arkansas.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS addressed the Chair.

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

Mr. BUMPERS. I assume I have about 10 minutes remaining.

The PRESIDING OFFICER. Nine and a half minutes.

Mr. BUMPERS. I yield 5 minutes to the Senator from Florida [Mr. GRAHAM].

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

Mr. GRAHAM. I thank the Chair.

Mr. President, I rise as one who has, prior to yesterday, supported every proposal for the United States to continue its efforts to develop an SDI system. I did so primarily for two reasons. First, I felt it was important for the United States to continue on the leading edge of technology in areas that might be important to our Nation's defense. And second, because I felt that the development of the SDI system would eventually be an important factor in negotiating a serious strategic arms reduction treaty with the Soviet Union.

The irony has been pointed out several times previously, that we are having this debate in exactly the same period of time that the strategic arms reduction treaty has now in fact been signed.

Some have said that we have wasted billions of dollars on SDI. If SDI was

what helped bring us to what happened yesterday in Moscow, the signing of that treaty, in my opinion it was an investment well made.

But I think the question before us now is an analysis of where do we go from here? What is our Nation's future? That, to me, should revolve around the following questions: What is the threat, what is the most protective and cost-effective means of meeting that threat, and what are some of the implications of the selection of a particular option?

The proponents of this have agreed that we are not developing this deployment as a means of countering a strategic threat from the Soviet Union. In fact, they would say that this system will not accomplish the purpose of defending us against a mass assault from the Soviet Union.

Rather, the threat is being defined here as accidental launches or what I would refer to as the deranged despot, the Saddam Hussein of the future, who would gain access to long-range nuclear capabilities.

Is this the most effective means and the most cost-effective means of meeting those two threats? My answer is clearly no. We have had the potential of accidental launches ever since there have been nuclear weapons and the capacity to deliver them over long distances.

While there are few episodes of accident, they clearly have not been a major threat over the past three to four decades. I believe that the most appropriate means of dealing with the accidental issue is a high level of constraint against proliferation, of both nuclear material and launch capabilities. That certainly would provide us with much greater assurance than focusing our attention on the deployment of 100 missiles around Grand Forks, ND.

Second, as to the deranged despot again, strict standards against proliferation. But I would also say, Mr. President, that if a President of the United States were to allow a deranged leader who might represent a threat to the United States, to gain access to that type of equipment and capability, that President ought to subject to impeachment and removal by the Senate.

We have had an instance as recently as in the administration of President Kennedy, when there was an effort in fact made to put missiles at a location that would have been a threat to the United States. President Kennedy acted boldly and with resolve; it probably brought us closer to world war III than at any point since World War II, as a statement of his commitment that we would not tolerate that kind of activity. Any President who acted with a lesser standard should not be in that office.

What are the implications of approaching the threat through the deployment of a missile defense system? First, at the foreign policy level, it is destabilizing. It is going to have all the implications that our colleagues have talked of in terms of its implications to what appears to be, and what we hope will be, a new relationship with the Soviet Union.

Second, here at home it repesents a diversion of critically short resources. We are not doing an adequate job in all of the areas that have been cited by my colleague from Washington and my colleague from Minnesota, and in areas such as meeting our basic transportation needs.

The PRESIDING OFFICER. The time of the Senator from Florida has expired.

Mr. GRAHAM. Mr. President, I conclude by saying I think we are holding on to old ideas in a new time; old ideas of a missile defense system against a threat which no longer exists and a site that was selected for reasons are no longer appropriate.

I believe now is the time to rethink our future, not attempt to relive our past.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, what is the remaining time?

The PRESIDING OFFICER. Six minutes and fifty-seven seconds. The Senator from Arkansas has 3 minutes and 40 seconds.

Mr. NUNN. Mr. President, let me just make a very brief comment and then I hope we can go ahead to a rollcall vote on this amendment. Then it would be my hope we could move on to the B–2 amendment. I would ask that Senator LEAHY, Senator SASSER, and Senator COHEN be alerted that we would very much like if they can come over and be prepared right after this rollcall, hopefully, to go to the B–2 amendment, which has a rather long time limitation. We need to get started on it.

Mr. President, the Bumpers amendment raises essentially the same issue we faced on the Harkin amendment. The amount of money cut is different but not much different. The level of SDI funding would be $3.6 billion if we agreed to the Bumpers amendment. That would be $1.5 billion below the administration request and, most importantly, it would knock out half the money for the one site, the Grand Forks ABM site that we voted for yesterday on a 60-to-39 vote. It would take out half of that money and in effect make a concept that we just approved very dubious in terms of its ability to move forward.

I do not think I need to belabor the point beyond that. We have had virtually every type of debate on the concept. I say to the Senators who voted for the concept, I hope they also vote against the Bumpers amendment so that we could make the concept at least get off to the start that is absolutely essential with the funding.

Mr. President, I know the Senator wants an up-or-down vote. I have agreed for my part to accord him that privilege. I have been moving to table on previous amendments today, but if he desires an up-or-down vote I will agree. I hope that this is all the SDI amendments we have. I know no one can pledge for anyone else, but we have had about as good a debate on SDI as I think we have ever had on the floor.

I hope we can move on to B–2, because I can inform my colleagues we have the B–2 amendment. Then we have an amendment Senator WIRTH will be proposing on abortion that is going to take considerable time. We have an amendment that Senator DOLE will be proposing on the President's authority relating to the United Nations' resolution on Iraq. That is going to take a considerable amount of time. We have at least five or six other, what I consider major, amendments that will require extensive debate and rollcalls, and we are trying to finish this bill sometime late tonight or tomorrow. My guess is it will be tomorrow. So I just hope that people keep that in mind and we can move forward.

I would be prepared to yield back the remainder of my time, once the Senator has concluded.

Mr. BUMPERS. Mr. President, I want to reemphasize the salient points of this amendment.

No. 1, it is hard for me to even say it, but it is true. If you vote for my amendment, you are still voting for a 20-percent increase over the total funding for SDI last year.

No. 2, we do not touch theater missile defense research. As a matter of fact, I am a strong proponent of that. And Congress can be proud of the fact that we increased this category last year, beyond the President's request, and that was before Desert Storm.

No. 3, the President did not ask for this new SDI initiative. The House did not ask for it. The Pentagon did not ask for it. And here we are under the Senate bill putting a billion and a half dollars into a defense system which nobody has asked for and which will be the biggest single appropriation in 1 year for a research program in the history of the United States. And if you vote for my amendment, you are going to be voting for $840 million for research on this Grand Forks anti-ballistic-missile defense system.

And that will be just about the biggest amount of money that has ever been put into a research project's first year in the history of this Nation. So it is not as though my amendment unilaterally disarms this Nation against Soviet missiles. You are not talking about bean bag. You are talking about $840 million under my amendment.

Mr. President, there has been no threat assessment. There is no technology that anybody knows and there is no cost estimate of where we are

going. Yet even I am putting $840 million into this.

I want to ask every Member of the Senate. When do you intend to start addressing the deficit? I tell you something. A $4 trillion debt of this Nation is 10 times more dangerous to our future than the Soviet Union. But nobody can seem to find the time or the place or the particular figures that they want to start addressing the $4 trillion debt and next year's $348 billion deficit.

Mr. President, you do not have to take a leave of your senses to be strong on defense. You do not have to see how much money you can vote for to prove that you believe in a strong national defense. And the time is rapidly approaching, my colleagues, when those 30-second weak-on-defense spots "ain't going to play in America." Every dime you put in this budget that we do not need for our national defense is a waste. Admittedly, every dime you do not put in that we do need is dangerous. And it is that fine line that we have to walk.

The Atlanta Constitution said in an editorial yesterday morning that if your house is falling down, the light is out, roof is falling in, and some guy shows up at your front door selling insurance against meteor showers, would you buy it?

That is what we are doing here. Do you know what the New York Times said? They said having denounced antimissile defenses for two decades, why do some Senators now find it so irresistible? There is no intelligence assessment that is new that warns of any immediate danger, either by disaffected Soviets or anywhere else.

The CIA will tell you that none of our enemies will have an intercontinental ballistic missile capability until well after the turn of the century. So why? What is the big, big rush? And we want to destroy the new world order in one fell swoop.

Mr. President, I ask my colleagues to think very carefully and vote sanely for defense, and sanity.

I yield the floor.

Mr. NUNN. Mr. President, just a couple of brief responses. The Senator from Arkansas said that the Department of Defense did not ask for this approximately $1.5 billion going into the overall limited defenses. That is erroneous. The Department of Defense asked for $1.46 billion in this area. And the committee added $90 million. So to say this just appeared out of the blue, the $1.5 million from the committee, is erroneous. It is not correct. We added $90 million, and the Department of Defense requested $1.46 billion.

When I heard all of these good speeches, they have been good speeches they have outlined a lot of problems America has, and I identify with those problems in terms of fiscal and in terms of social, we have a lot of problems facing us. This is not a budget resolution. This amendment has been debated as if it is a budget resolution. We decide the allocation for defense in social programs and interest on the debt during the budget resolution.

I am really always amazed then when people stand up one after another talking about defense, as if we are the ones depriving every need we have in this country. Mr. President, the defense budget has come down 7 years in a row; 7 years in a row we have brought the defense budget down. If any other department of government has brought down this amount since 1985 as much as defense I hope somebody will tell me what department it is.

By 1996, if we stay on the track we are on with this bill, the defense budget will have been reduced 35 percent in real terms from 1985. Yet all I have heard for the last 2 hours is one Senator after another, largely on this side of the aisle, I regret to say, acting as if the defense budget is depriving every need we have in this country and causing the problem with interest on the debt. I wish I would hear some of those speeches when there are other budgets up on the floor but I never do. It is only the defense budget.

Mr. President, we will have by 1995 a defense budget that is approximately 3.6 percent of the gross national product. That is the lowest level it has been. That is the lowest level it will have been since the late 1940's before the Korean war. Yet, the defense budget is attacked on the floor over and over again as if this is a budget resolution.

Mr. President, this is not a budget resolution. This is a debate on a defense program within the context of the budget that we were assigned by the budget resolution. We could not exceed the budget resolution. We are under the budget resolution.

I hope that our colleagues when they vote on this amendment and others will put this matter in context. These are wonderful speeches but they are speeches that should be made when we are making the decisions on the budget resolution and then we will debate how much the other parts of the budget have grown while the defense budget has been coming down, 7 years in a row.

Mr. President, I yield the remainder of my time. I know the Senator would prefer an up-or-down vote.

Mr. WARNER. Mr. President, I would like the RECORD to indicate that I associated myself with the remarks of the distinguished chairman of the Armed Services Committee. This is a clear example of the leadership that he provides every step in the defense process from the moment the President's budget arrives at Capitol Hill, throughout the hearings and the markup, and then the eventual presentation of the full bill to the Senate.

Mr. BUMPERS. Mr. President, I want to respond to one thing. You tell me what other areas of government, whether it is help to pregnant women, immunized children, whatever, who else do you know getting a 20-percent increase? That is what this amendment does. It cuts a 50-percent increase in one program, to a 20-percent increase. I invite you to tell me who else in the Federal Government is getting 20-percent increases? I yield the floor.

Mr. DURENBERGER. Mr. President, I rise to comment on the Armed Services Committee's provisions on the strategic defense initiative and the debate conducted yesterday and today in the Senate. I support the committee's SDI plan because I believe it represents a fair and responsible plan to deploy a treaty-compliant ABM system and to negotiate together with the Soviet Union on modifications to the treaty.

The plan lays out the goal and the objective of providing an effective, limited defense of the United States against accidental or limited missile strikes and to maintain strategic stability as we work together with the Soviet Union to enhance mutual security.

The plan adopted by the committee by a large bipartisan majority calls for deploying an ABM system in complete compliance with the ABM Treaty. One site. One hundred interceptors. Contrary to much of the debate and public discourse, there is nothing in this plan that authorizes the United States to violate the ABM Treaty.

I have studied it. I have considered the comments made by the proponents and opponents. And I am satisfied that this plan does not violate the treaty, nor does it require the United States to violate the treaty in the future. It does not urge the United States to violate the treaty. In fact, earlier today, the Senate unanimously adopted an amendment that clearly states that nothing in the committee bill authorizes the United States to violate the treaty. I don't believe the amendment was really necessary because the bill is fairly clear on this matter, but some Members sought to remove any doubt.

Mr. President, is it conceivable that the United States, taking direction and guidance from the committee's plan, will negotiate modifications to the treaty with the Soviet Union? Yes, of course. But that is no different than anything two administrations have already been saying for 9 years. In fact, since the treaty's inception 20 years ago, we have always retained the right to negotiate amendments.

Since 1983, Congress has approved some $24 billion for SDI, a substantial part of which has been devoted to systems that, if developed beyond a certain point or actually deployed, would massively violate the ABM Treaty, if it were not amended. Brilliant Pebbles. Brilliant Eyes. Space-based battle management. Certain sensors. X-ray

lasers and a host of other things. Two administrations and Congress since 1983 have not violated the treaty, but they have planned for future options.

It is clear to this Senator that the committee plan is in fact a two-track design: one track to deploy a treaty-compliant system and another track to negotiate future modifications of the ABM Treaty.

There is no prohibition in the treaty against modifying or amending it, or even abrogating it. This Senator does not believe the United States should abrogate the treaty. The committee plan does not call for that action. And again, it does not call for violating it either. This Senator does believe that we should not be forever opposed even to considering modifications. The times have changed since 1972. Technologies are more capable. Risks of accidental launches are higher. Threats from third countries are greater.

Mr. President, I believe the time has come for the United States to think very seriously about defending our country against accidental or limited ballistic missile strikes on the United States. There is clearly less threat today than ever before from a massive, intentional missile attack against us from the Soviet Union. But that is not the threat that the committee plan envisions.

A number of my colleagues have suggested that there is no risk of accidental launch from the Soviet Union. I am not sure we should be so comfortable in those assurances. The Soviet Union today is not the most stable place, and we can never be sure what the future will hold. Yes, there are enormous positive changes taking place in the Soviet Union. But these same changes cause a certain degree of instability. It is my understanding that even some Soviet leaders have expressed these same concerns. It is not a trivial matter or just some hypothetical proposition.

Additionally, it is very important to keep in mind that we are now planning for the future. This treaty-compliant system will not be deployed tomorrow or next year. It is the future we are looking to. And the future holds many uncertainties, not only from the Soviet Union but also from third countries.

Mr. President, there is a very real future threat from third-country ballistic missiles. The gulf war demonstrates the political terror value of ballistic missiles. The capabilities of these weapons will not contract in the future. Their ranges and accuracy will increase. The ability to deploy warheads of mass destruction on these missiles will grow. The number of countries that possess these missiles will expand.

Yes, we must make every possible effort to control the proliferation of ballistic missiles and their technologies. Our experience with Iraq's nuclear program proves that inspection and control regimes may not be as capable as we had believed.

According to my colleagues from Virginia and Maine, the Central Intelligence Agency estimates that by the year 2000, anywhere from 15 to 20 developing countries will have ballistic missile capabilities. At least some of these are projected to possess missiles with ranges sufficient to strike the United States.

I cannot speak to the likelihood of each of these countries developing nuclear, chemical, and biological weapons for possible delivery by missile. But it is a real concern. I reemphasize the apprehension that the previously unknown extent of Iraq's nuclear program has caused in the international community. Hard as we try, this recent experience with Iraq forces us to recognize that we cannot put the genie back in the bottle. We cannot control every weapon from every possible source.

The plan advocated by the Armed Services Committee and a majority of my colleagues in the Senate takes these realities into account. Third-country threats. Soviet instability. Limited strikes. Accidental launches. The time has come for the United States to begin defending itself. We have established a goal to deploy a treaty-compliant system by 1996. We will negotiate with the Soviet Union on modifying the treaty.

I believe we are set upon a positive course. The committee gives some concrete direction and meaningful goals for the SDI program. I commend and congratulate the committee for bringing forth this proposal to establish these goals.

Contrary to assertions made by some critics of the plan, this country is not rushing headlong toward violating or abrogating the ABM Treaty. At each step of the way, the Congress will have a check on the process. We will continue to review and reevaluate the progress toward this goal, and make future decisions based on new information and developments.

We will also embark on a negotiations track in cooperation with the Soviet Union. This Senator does not believe that we should be governed exclusively by what we presume to be the likely Soviet response. Some have suggested that the Soviets will never agree to modify the treaty. I am not completely convinced of that that assertion is necessarily true.

It seems to me that, in addition to the United States, the Soviets also must contend with a strategic ballistic missile threat from China. They must also deal with third-country threats much closer to their borders than we currently confront. It is entirely possible that the Soviet Union is even more immediately concerned about third-country missile threats than we are. I do not know the answer to that question. It is certainly worth exploring with the Soviet Union. And that is what the committee proposal suggests.

Mr. President, I conclude by congratulating my colleagues on the Armed Services Committee for forging this consensus. I have been pleased to support this proposal during its consideration before the Senate over a 2-day period. Although the conference on these matters will no doubt be contentious, it remains my hope that the House will concur with the Senate position.

Thank you, Mr. President. I yield the floor.

Mr. COATS. Mr. President, I rise to strongly support section 211 of the Defense authorization bill, the Missile Defense Act of 1991. Despite the protestations of some Senators, this provision is truly a consensus statement on SDI. The Missile Defense Act is the product of many hours of debate, a lot of hard work and compromise. By both sides. Insofar as an overwhelming majority supported this measure during the Armed Services Committee's markup, I believe it truly represents a realistic and balanced consensus position.

The Senate should be aware that an earlier version of the Missile Defense Act was defeated in committee by a combination of Republican and Democratic Members who had concerns with various provisions. In the end, however, the majority of these concerns were adequately addressed and both sides agreed on acceptable middle ground. Any attempt to modify this important provision would simply shatter the carefully crafted compromise.

Since the Missile Defense Act, in my view, is the only realistic near-term option for actually deploying an operational ballistic missile defense system, those who seek to undermine it have an obligation to explain to the American people why they seek to deny them defenses against limited, accidental or unauthorized ballistic missile attacks. Stated simply, those who offer amendments to weaken the Missile Defense Act, either by reducing funding or by modifying the structure of the provision, are simply stating their view that the American people should not be defended against ballistic missile attack.

Mr. President, despite my support for the Missile Defense Act, with its limited goals for near-term deployment, I continue to believe that we should pursue a more comprehensive strategic defense system as a long-term goal. As we reduce strategic offensive forces, I am concerned that offense-only deterrence will at some point become precarious and unstable. If we are to maintain survivable deterrent forces into the next century, we will eventually need to rely more heavily on active defenses.

For the purposes of this debate, however, questions about strategic stabil-

ity really do not apply, since the Missile Defense Act is designed to provide protection against very limited ballistic missile attacks. This form of protection would be very effective in defending against a terrorist attack or an accidental launch, yet it would not impact the central United States-Soviet deterrent relationship.

Given its very limited scope, I have difficulty understanding the opposition to the Missile Defense Act. The only explanation for this appears to be an uncompromising belief in the sanctity of the ABM Treaty. Ironically, the ABM Treaty was negotiated and ratified 20 years ago in order to codify the doctrine of mutual assured destruction, which has nothing at all to do with the Missile Defense Act, or with the President's GPALS Program for that matter.

In examining the Missile Defense Act, a more appropriate point of reference is Iraq's use of Scud ballistic missiles during the Persian Gulf War. While these missiles were relatively primitive and had no capability to target the United States, they are symbolic of things to come. In the future, we must be prepared for irrational leaders such as Saddam Hussein to possess relatively accurate ballistic missiles capable of holding U.S. cities at risk, possibly with chemical, biological, or nuclear warheads. These threats have nothing to do with mutual assured destruction and the ABM Treaty. Unfortunately, those who continue to worship at the altar of this treaty are currently attempting to prevent us from protecting American citizens from such third country attacks in the name of an agreement that is now badly in need of modification.

The Missile Defense Act in no way advocates the abrogation of the ABM Treaty. It merely sets a goal of deploying a near-term treaty compliant missile defense system while we engage the Soviets in discussions to modify the treaty. We must bear in mind that a treaty-compliant system will never be capable of defending all Americans and hence is not an acceptable end result. The treaty must be modified to allow the deployment of additional missile defense sites to cover the entire United States, including Alaska and Hawaii. I find it difficult to imagine that there is a Senator who would advocate defending only some Americans, although that is certainly what the result will be if we do not modify the ABM Treaty.

I would also point out that the arms control goals contained in this provision are very reasonable and modest. Nevertheless, they are essential if the Soviets are to take us seriously in negotiations to modify the ABM Treaty.

Mr. President, I have expressed my views on SDI and the ABM Treaty on the Senate floor several times this year. I will, therefore, refrain from getting into additional detail at this time. There are many important issues in this debate and I am confident that we will continue to revisit them in the months and years to come. For the time being, however, I firmly believe that the Missile Defense Act of 1991 is a modest and appropriate first step toward settling our remaining differences. I hope all Senators will support this provision and oppose any amendments to weaken it.

Mr. NUNN. Mr. President, one final word. I will say to the Senator that if the Armed Services Committee and the Appropriations Committee decides to increase one program 20 percent, we usually reduce some other program because we stay within the budget context. We stay within the budget. We do that in this bill. This is not over the budget. It is under the budget. I think we are really having a debate on the amendment as if it is a budget resolution. It is not.

Mr. President, I yield the remainder of my time. I believe the yeas and nays have been ordered on the amendment.

The PRESIDING OFFICER. All time as expired.

Mr. BUMPERS. Mr. President, I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arkansas. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BURDICK. Mr. President, on this vote I have a live pair with the Senator from Arkansas [Mr. PRYOR].

If Senator PRYOR were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

On this vote, the Senator from North Dakota [Mr. BURDICK] is paired with the Senator from Arkansas [Mr. PRYOR]. If present and voting, the Senator from North Dakota would vote "no" and the Senator from Arkansas would vote "yes."

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

The result was announced—yeas 46, nays 52, as follows:

[Rollcall Vote No. 173 Leg.]

YEAS—46

| | | |
|---|---|---|
| Adams | Bumpers | Glenn |
| Akaka | Chafee | Gore |
| Baucus | Cranston | Graham |
| Biden | Daschle | Grassley |
| Boren | DeConcini | Harkin |
| Bradley | Ford | Hatfield |
| Bryan | Fowler | Jeffords |
| Johnston | Lieberman | Sanford |
| Kassebaum | Metzenbaum | Sarbanes |
| Kennedy | Mikulski | Sasser |
| Kerrey | Mitchell | Simon |
| Kerry | Moynihan | Wellstone |
| Kohl | Pell | Wirth |
| Lautenberg | Reid | Wofford |
| Leahy | Riegle | |
| Levin | Rockefeller | |

NAYS—52

| | | |
|---|---|---|
| Bentsen | Durenberger | Nunn |
| Bingaman | Exon | Packwood |
| Bond | Garn | Pressler |
| Breaux | Gorton | Robb |
| Brown | Gramm | Roth |
| Burns | Hatch | Rudman |
| Byrd | Heflin | Seymour |
| Coats | Helms | Shelby |
| Cochran | Hollings | Simpson |
| Cohen | Inouye | Smith |
| Conrad | Kasten | Specter |
| Craig | Lott | Stevens |
| D'Amato | Lugar | Symms |
| Danforth | Mack | Thurmond |
| Dixon | McCain | Wallop |
| Dodd | McConnell | Warner |
| Dole | Murkowski | |
| Domenici | Nickles | |

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Burdick, against

NOT VOTING—1

Pryor

So, the amendment (No. 994) was rejected.

Mr. NUNN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. LEAHY May we have order, Mr. President?

The PRESIDING OFFICER. The Senate is not in order.

Mr. LEAHY. Mr. President, we still do not have order.

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

Mr. NUNN. Mr. President, if I could have the attention of our colleagues.

Mr. President, has that vote been reconsidered and tabled?

The PRESIDING OFFICER. Yes; it has.

Mr. NUNN. Mr. President, we have made a lot of progress today. We have had vigorous debate, good debate, constructive debate on the whole question of SDI.

Mr. LEAHY. Mr. President, the Senate is still not in order. I am standing 4 feet from the distinguished floor manager, and I cannot hear him.

The PRESIDING OFFICER. The conversation will cease in the rear of the Senate floor.

The Senate will be in order.

The Senator from Georgia.

Mr. NUNN. Mr. President, we have had good debate on the entire SDI Program. I think we probably had the most thorough debate, the most reasoned and constructive debate, we have had on this matter for a long time.

Mr. President, I hope we can move on to the B-2 amendment. We have a time agreement, when we have that amend-

ment submitted. I believe Senator LEAHY and Senator COHEN are both on the floor. Our time agreement is 4 hours on the amendment equally divided, plus 45 minutes for the Senator from Tennessee [Mr. SASSER].

It is my hope that, as we proceed along here, we can cut that time down by an hour or so. But we have to wait and see on that.

We also will have several other important amendments this evening. If we do not go well into the evening tonight, there is no hope to finish this bill even by tomorrow night. We have a number of amendments that have been filed. We have others that keep coming. We are working with Senators trying to see if we can work out amendments, but there are at least five or six other major amendments that I know about that will require extensive debate and rollcalls.

So I have no choice but to continue tonight until what I would estimate to be 11 to 12 o'clock tonight. I wanted to let everyone know that. If we do not do that, there is just no hope of finishing this bill tomorrow. If we could cut down on the time agreements, if we could get amendments worked out, if we could get Senators not to pursue certain amendments that they have listed, then we can cut this down. It is even conceivable we could finish this bill very later tonight, but I am not terribly optimistic about that now, I wanted to let our colleagues know this will have to be a reasonably late evening.

Mr. DOLE. Will the Senator yield?

Mr. NUNN. I yield to the Senator from Kansas.

Mr. DOLE. Mr. President, let me just state, on this Senator's part, we are not going to stay here until 10 or 11 o'clock tonight to hear the same Senators get up and talk 2 or 3 hours on every amendment. We started on the SDI yesterday afternoon at 3:30. It has taken almost 24 hours to dispose of SDI. We heard the same Senators speak 4 and 5 hours, and now they are going to start over on the B–2. That is fine. That is their right.

But we do not have to sit here all night to accommodate two or three or four Senators who are not willing to reduce the time. We have had the B–2 debate 25 times. We do not need 5 hours on the B–2 amendment.

I just say to the Senator from Georgia, I know he has a difficult job. But we are not going to stay here until midnight or 2 o'clock so we can accommodate two or three Senators who will not accommodate the rest of us.

Mr. LEAHY. Mr. President, if I might respond to the distinguished Republican leader. I would note I have said nothing on this bill since it has been on the floor. It is my amendment he is speaking of but I have not spoken a total of 2 minutes on the defense authorization bill.

I want to let the distinguished leader know that I will do everything possible to yield back time. But I also advise the distinguished Republican leader that, as we have found on other bills, I know when I have had other amendments, he has noted under the rules that he had many Members on his side of the aisle that did want to talk at great length.

I am sure he feels, as I do, that the rules apply the same to all 100 U.S. Senators. But it will be the intention of this proponent of this amendment to do everything possible to cut down time.

Mr. METZENBAUM. Will the manager of the bill yield?

Mr. NUNN. I do not have the floor.

The PRESIDING OFFICER. The Senator from Vermont has the floor.

Mr. LEAHY. I ask the Senator from Georgia, am I correct that we are now prepared to go forward with this amendment?

Mr. EXON. Will the Senator from Vermont yield for a question,

Mr. NUNN. If I could respond just briefly to the Senator, the answer is I would prefer to go forward with the B–2 amendment now. It is up to the sponsor of the amendment.

Mr. LEAHY. If I might help the Senator from Georgia. If everyone would withhold just for a moment. Let me just submit the amendment so we can start the time running. Would that be accommodating to the distinguished manager?

Mr. NUNN. Yes.

AMENDMENT NO. 1017

(Purpose: To terminate the new production of B–2 bomber aircraft)

Mr. LEAHY. Mr. President, I send an amendment to the desk on behalf of myself, Mr. COHEN, Mr. LEVIN, Mr. MCCAIN, and others, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mr. COHEN, Mr. LEVIN, and Mr. MCCAIN, proposes an amendment numbered 1017.

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

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

The amendment is as follows:

On page 22, strike out line 1 and all that follows through page 23, line 14, and insert in lieu thereof the following:

**SEC. 118. TERMINATION OF NEW PRODUCTION OF B–2 AIRCRAFT.**

(a) REDUCED AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 103(1)(A), the amount authorized to be appropriated for the Air Force for fiscal year 1992 for the procurement of aircraft is $7,463,539,000.

(b) PRODUCTION TERMINATION.—Funds appropriated for the Department of Defense for fiscal years after fiscal year 1991 may not be obligated or expended to commence production of any B–2 aircraft.

(c) AUTHORIZATION SCOPE OF B–2 PROGRAM.—Amounts appropriated for the Department of Defense may be expended for the B–2 aircraft program only—

(1) for the completion of production of those B–2 aircraft for which production was commenced with funds appropriated for a fiscal year before fiscal year 1992; and

(2) for research, development, test, and evaluation, including flight testing.

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

Mr. LEAHY. Mr. President, I yield without losing my right to the floor and the ability to reclaim it at any time.

Mr. EXON. I thank my friend from Vermont. I just want to echo the words by the Senator from Georgia, and especially the emphasis placed on those words by the Senator from Kansas.

I certainly agree, the Senator from Vermont has been very restrained. I do not believe I have heard him take any time on this bill as yet. But I think he is about to.

To put this in another context, if everybody says, well, I have a right to talk for innumerable periods of time on this because I have not talked on other amendments, then, with 100 Members of the body all with equal chances, we just multiply the problems at hand.

Before I ask the question, the facts of the matter are there are two or three votes, in my opinion, that have been changed one way or the other, probably not at all, on all the measures that have been put forth.

I guess that is a reason to say, why can we not be a little bit more understanding of ourselves and the quality of life around here. I am just wondering, as a step in that direction to show our good faith in this effort, if we could not begin the debate on the amendment just offered by the Senator from Vermont by agreeing to cutting down the time agreement from what it is now to 1½ hours equally divided on each side, and maybe one-half hour instead of 45 minutes for the Senator from Tennessee, who unlike the Senator from Vermont, has been on the floor for numerous periods on this bill.

Could we not show our good faith? I am asking if we might consider that possibility at this moment.

MR. LEAHY. Mr. President, I answer my good friend from Nebraska that we should probably stop talking about how much time we are going to take once the debate started, and just allow the debate to start. The Senator from Vermont fully intends to yield back whatever time he possibly can.

There are a number of Senators who are cosponsors, who have asked to speak. We tried to protect them within the time agreement. Senators should know me well enough that I take less time than just about anybody else around here.

I want to go to Vermont with my family as soon as we can get through this session for the August recess. I have that further incentive.

Let us just stop talking about how much time it might take once the debate starts, and start the debate.

I thank my friend.

Mr. METZENBAUM. Mr. President, will the Senator from Vermont be willing to permit me to just inquire of the Senator from Georgia concerning the possible time agreement and nothing further?

Mr. LEAHY. I will. But first, Mr. President, on behalf of Senator KERRY, I ask unanimous consent that Brad Cohen, of his staff, be given the normal floor privileges during the debate.

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

Mr. METZENBAUM. The Senator from Georgia knows I have been indicating I wanted to bring up an amendment for the past couple of days and understood other matters had priority. Would the Senator from Georgia be willing to agree to a 1-hour time period sometime tomorrow? Seven in the morning? Nine in the morning? One o'clock?

Mr. NUNN. I say to my friend from Ohio the answer is probably yes, but I have to speak with Senator BOREN. I do not see him on the floor. There are too many other matters I have been negotiating with people to be able to get together with him. We can certainly accommodate some time agreement. One hour will be fine. Maybe we can agree on less than that.

Mr. METZENBAUM. The Senator from Ohio does not want to be crowded and asked to take 10 minutes on a side. I just want to be reasonable, but I want to make my point at this time and we can discuss the matter further.

Mr. NUNN. I understand. My colleague is talking about an amendment that would cut $350 million?

Mr. METZENBAUM. Cut the $350 million the Intelligence Committee asked the Senator to cut. It is a matter that, as the Senator will understand, we will have to get into.

Mr. NUNN. I understand. I will talk to Chairman BOREN and get back to my colleague.

Mr. LEAHY. Mr. President, may I ask unanimous consent that that amount of time not come from the time of the proponents or opponents?

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

Mr. LEAHY. Mr. President, we begin the debate on the B–2 bomber the day after President Bush and President Gorbachev signed the historic START agreement to reduce thousands of strategic warheads. It is ironic that just as President Bush proclaims the dawn of a new world order, we are here debating whether to proceed with the most expensive and unneeded vestige of the old order.

Earlier this month, the Bush administration announced that the Federal deficit of the United States will reach $348.3 billion in fiscal year 1992. The announcement was accompanied with little fanfare. OMB quietly announced the new deficit numbers, and the department CPA's noted once again that economics is an imperfect science.

There has been no signal from the White House that a budget deficit of this magnitude is cause for concern.

I think most Vermonters are concerned. I am concerned. And I think everyone on both sides of the aisle would like to do something to restore the faith and credit in the U.S. Treasury.

This afternoon Senators are going to have a chance to restore some of that faith and credit.

Today, the Senate has another opportunity to halt the B–2 bomber program.

Two years ago, 27 Senators including 10 committee chairmen, supported the first amendment I offered to stop the B–2. I promised those who voted with me that they would look back at that vote with pride.

There are more of us today who wish we had ended the program back then—several billion dollars ago. There are millions of Americans who will never accuse my colleagues of hindsight if they finally join this cause—before we spend $35 billion more.

Opponents of the B–2 have swelled as the case for the bomber collapsed along with the Communist regimes in Eastern Europe.

The amendment we are offering today stops production of the B–2 at 15 planes and saves $30 billion. We could have saved more 2 years ago—but for many opponents back then the cold war was not yet officially over and they feared we would be shortchanging our defense capabilities by not moving ahead on the B–2.

The B–2 has been anything but shortchanged. It has been one of the most avaricious and wasteful weapons programs that the taxpayers of this Nation have ever been forced to underwrite. The program is a textbook case of Federal waste at its worst.

Over the past 10 years, Congress has given the Pentagon $30 billion to spend on the B–2 with very little oversight. What information we have for that huge expense is alarming. The problems that plague the B–2 are more than enough to cancel production. Incredibly, even this week, when the Air Force knew the B–2 debate would occur, the Government has withheld progress payments from Northrop for poor cost accounting standards.

The B–2 is a gross case of fraud against the American taxpayers.

We still do not know what the plane will cost. The few test results tell us little about its capability. Manufacturing problems continue to produce incomplete planes behind schedule, and over cost. And even worse—the plane has no mission.

For too long, the Pentagon has been excusing these problems as the cost of doing business as usual. The Department of Defense has sold this Senate, but not the American people, on the most expensive plane ever built. If we went to the American taxpayers and told them what has been spent on this plane and asked them if they want us to continue, I can assure you, Mr. President, you would hear an overwhelming "no." Certainly you would from my State of Vermont. After $30 billion—we have a total of three planes with 94 percent of the flight testing still to be completed. And while we wait for the Pentagon to test these planes—we are putting in orders for 55 more.

The B–2 funding schedule is a classic example of bilking the American taxpayer. Last year, Congress approved $2.3 billion—the sum requested by the Defense Department for two more B–2 bombers. I cannot help but think each weekend when I go back home that $2.3 billion is the total annual budget for my State of Vermont for the next 4 years. Vermont could do a lot with $2.3 billion. Let me tell you what the Pentagon did with $2.3 billion.

No planes were purchased from that $2.3 billion. Do you know where it went? It went entirely to cost overruns. If we had killed the bomber last year—we would have exactly the same number of planes we have today—but we would have either turned the $2.3 billion back into needed domestic programs, or used it to reduce the budget deficit. The truth is, we got nothing for it—except more money heaped on our national debt and deficit.

The Air Force wants to buy 75 B–2 aircraft at a cost of $65 billion. That is more than the Air Force originally planned to spend for almost twice that many aircraft. The total cost has risen $4 billion in the last year alone. And it will go higher—unless of course the problems that have plagued this program for years suddenly and miraculously disappear. But even those of you who believe in miracles must have lost your faith in the Defense Department's ability to produce them by this time. Unfortunately, we do not build airplanes by miracles, and we do not find the money by miracles.

The B–2 is a revolutionary aircraft: a flying wing made from composites. The Air Force proceeded on a compressed building schedule expecting to discover how to build the plane by experimentation. Cost estimates assume that manufacturing progress will improve. When? For every setback that we experience during this learning stage—billions are added to program cost overruns.

The General Accounting Office recently testified that manufacturing the six first aircraft has been troublesome. The planes are being delivered late and are incomplete. The first six aircraft have been behind schedule and will roll off the assembly with 650,000 defects. Manufacturing problems not only add

cost but, ironically, delay the testing needed to check manufacturing. The B–2 program has completed only 6 percent of the planned flight test program. Late deliveries of the planes has caused the test schedule to slip 3 years. Flight testing will not be completed now until 1996. By then, American taxpayers will have purchased more than 70 percent of the B–2 fleet.

Mr. President, we learned from the B1–B program that making fixes on completed aircraft is expensive. We are not going to know enough about the B–2 until it is too late.

But, let us assume, after we spend nearly $1 billion an airplane, the program defies all experience we have had so far with it and the plane actually flies and does what it is supposed to do. Our Air Force strategic planners are still frozen in the nuclear ice age. Incredibly, the Secretary of Defense continues to insist that the B–2 is primarily a penetrating strategic bomber. I do not really believe that those who are lobbying for the B–2 actually believe what they are saying.

Dramatic changes in the world have made that mission anachronistic. We do not have any strategic targets in Red Square. Look at the picture yesterday of President Bush and President Gorbachev walking down Red Square, at the same time we are saying we have to develop an airplane to bomb Red Square. The time is gone. It is past.

B–2 supporters argue that the plane is necessary to maintain a robust nuclear force under the START Treaty signed by President Bush and President Gorbachev on Wednesday. The final treaty favorably counts penetrating bombers like the B–2. One plane will be counted as only one warhead, even though it may carry up to 20 nuclear weapons. But there are favorable counting rules for other weapons, including bombers that carry cruise missiles.

The advanced cruise missile—which itself is stealthy—can carry out the same mission as a penetrating bomber at a fraction of the cost.

Without the B–2, the United States has 9,000 nuclear warheads under START. With this massive number of warheads on B1–B bombers, B–52H's, Trident submarines, Minuteman II, Minuteman III, and the MX, the United States has more than enough nuclear force to deter any conceivable nuclear threat.

Recently, B–2 supporters have touted the conventional capabilities of a long-range stealth bomber. The B–2 was not designed for such a mission and modification for precision weapons used so effectively in the Persian Gulf will add to the total program cost.

The amendment I offer today will permit 15 planes to become operational and carry out conventional missions. I strongly believe, however, that tactical aviation constitutes a core of modern capability. And, these planes are being enhanced.

Mr. President, Americans are willing to stand up for the defense of our country. I come from a State where people are very proud of their willingness to defend our Nation and have served in every war.

But there is a lot more to the defense of the United States than simply saying spend more money. Americans are going to spend whatever is necessary for our national security. But that national security means much more than our military might.

The security of our great Nation also depends on how we spend our limited resources to promote a strong economic base that is going to properly feed and educate and care for our people. How well our people are fed, how well our people are educated, the health of our country, that is part of our national security, too. It is not just a question of how much money we can put into the defense budget.

It is not just defense spending that makes this Nation strong. Our people make this Nation strong. The greatest challenges to our country are budgetary red ink and growing international competition. America must look beyond military threats if it wants to remain a superpower.

Our massive debt has prevented the United States from paying attention to domestic problems that are going to be a far greater threat to our security than any foreign military force. Our national debt is now over $300 billion. We spend $545 million every single day just on interest payments. That amounts to spending 16 percent of our Federal budget on interest every year.

The roads and bridges that provide our national infrastructure are crumbling, and despite being the wealthiest nation on the Earth, we do not provide shelter and food to the poor. The United States ranks 13th among industrial nations in maternal mortality rate. We are 17th in infant mortality rate. We have to start making choices in this country.

Last year, the Senate put its faith and trust in the B–2. We considered the mission and the cost, we gauged the threat, and in the end, a majority of the Members of the Senate said the cost was worth it.

The world has changed since then. The B–2 mission no longer makes sense. The costs are always changing. We have enough hindsight to know the program costs we are being asked to approve today are going to cost more tomorrow.

And, the same defects that plagued this program through its history are still there today. Nobody can rest assured that if they vote to continue this program today the costs are going to be the same. They are going nowhere but up. The Senate now has the advantage of hindsight to judge the B–2 program. It does not take foresight, just common sense, to cancel the program now.

Mr. President, I emphasize again for those who feel that our national security is based only upon the weapons systems we build or on what we spend on our defense budget. They miss the overall point. Will America have a strong military? Of course. But I think every single American knows that military power is not the sum total of our national security.

We see the Japanese and the European Community able to outcompete us at so many things economically worldwide. Does that not also speak to our national security? Should we not also be spending some of our limited resources, to improve our ability to compete economically with the rest of the world? Or do we decide that economically we must be subjugated to other nations and all we can say is we have more nuclear weapons than you? Is it not also part of our national security to speak of the health of our people? You will find everywhere you go in this country, almost everybody will tell you they are concerned about health costs and providing for health care for them and their family. Should that not be part of our national security? Bring ourselves up to a level similar to other industrial nations in providing health care? Should we not be looking at our education system? If children in other industrialized nations are being better educated, should we not be asking what that does to our national security?

Mr. President, I consider myself very fortunate to be American, to be born in this wonderful country. I think of the great opportunities that are here. As a U.S. Senator, as a parent, as a Vermonter, I am also frustrated at seeing so many opportunities being wasted and lost. So many doors being closed in this country on the true needs of our people. Doors that may never be opened unless we get some of the avaricious spending habits of our Government under control. We need to set priorities that speak to the real security of the United States.

Mr. President, I see my friend and colleague, the distinguished Senator from Maine, on the floor, and I yield to him.

The PRESIDING OFFICER (Mr. FOWLER). The Senator from Maine [Mr. COHEN] is recognized.

Mr. COHEN. Mr. President, the last time that the Senate debated the defense authorization bill, I argued that the B–2 plane was a plane whose cost remained elusive, whose mission remained questionable, and whose capability remained unproven. Today, every single point remains true, but we can add one other observation: That the management abilities of the B–2 lead

contractor, Northrop, are now in serious doubt.

Mr. President, let me quote from a book prior to discussing the B–2, a quote I came across recently in reading "The Commanders," a book by Bob Woodward. It is a major best seller now. I would like to focus upon one particular paragraph. On page 74 of that book, Woodward writes:

Cheney already knew enough to be wary of the Air Force. The officers were a smooth lot, who made a great show of being helpful and responsive. Make a request and lots of colonels and generals would appear and talk to you until you had briefings and viewgraphs and neatly tabbed studies coming out your ears. Lots of motion, lots of paper flying around, lots of men in light blue uniforms and crisp shirts to answer any question. The Air Force seemed craftier than the other services, more familiar with Washington's ways, more adept at throwing up a smoke screen. Like almost everyone in the Pentagon, they were selling, but Air Force salesmanship was more consistent and better packaged, as if the service spoke with one persuasive voice. You had to look hard to see exactly what was up. The senior Air Force officer corps was so unified and impenetrable, it was often called the "Blue Curtain."

I think the blue curtain has, in fact, been dropped around the B–2. It has been dropped around the B–2 with respect to cost. We can invoke Yogi Berra's "deja vu all over again." Two years ago we were told "We have spent $23 billion, we cannot afford not to proceed." Last year we were told "We have spent nearly $27 billion, we cannot throw it away." And now we are told "We have spent over $30 billion, we cannot stop now."

Every single dollar we approve seems to justify the appropriation of yet more money. As the Senator from Vermont pointed out, OMB now estimates that the Federal deficit next year is going to be roughly $348 billion, $70 billion higher than we assumed it was going to be when we approved the budget agreement last fall. And the picture gets a lot worse when we look into the future years.

I have quoted from Norman Augustine's book, "Augustine Laws" before, but I think it bears repeating right now. Augustine pointed out that if the historical exponential growth in the cost of tactical aircraft continues, by the year 2054 "the entire defense budget will purchase just one tactical aircraft. That aircraft will have to be shared by the Air Force and the Navy 3½ days each per week, except for leap year, when it will be made available to the Marines for the extra day."

He found a similar growth pattern with respect to the cost of bombers; which, in fact, describes well the skyrocketing B–2 unit program costs.

Now, I came to the conclusion a couple of years ago that even if the B–2's flying wing design proved to be airworthy, the cost of the B–2 was going to cause it to crash and burn. But for those who have yet to come to that conclusion, I want to remind them that originally the Pentagon was proposing to buy a force of 132 B–2 bombers at a cost of $58 billion.

This price tag grew steadily until it reached $75 billion last year. At that point, Secretary Cheney said we have a problem here, let us cut the purchase down from the 132 we had planned. Instead, we are going to buy 75. Unfortunately, the price tag dropped only a small amount, to $61 billion and it has continued to rise until it now is $65 billion, or $860 million per plane. And this price tag threatens to climb even higher if management does not improve and manufacturing does not improve.

So I would suggest rather than approve another $30 billion on top of what we already appropriated, we instead face up to reality and cut our losses now.

Now, if we instead make a decision to reject our amendment and go forward with B–2 production, it is clear we are going to have to sacrifice something. Even the Senate Armed Services Committee has recommended this. They have recognized this, and they have recommended we start making choices because we are on a long downward slide as far as defense spending is concerned and we cannot afford everything we like, indeed, we cannot afford everything we need.

And so the Armed Services Committee in its report indicates we have some tradeoffs we need to make:

The Defense budget will continue to decline so that these tradeoffs will be *necessary*—

Underlined in the original—

tradeoffs will be *necessary*.

What kind of tradeoffs are we talking about? The committee asks the Pentagon to go back and tell us: If we have the B–2, what does that mean in terms of what else we need? Can we trade the B–2 for tactical attack aircraft? The B–2 for fighter and support aircraft? The B–2 for carrier-based aviation and carrier battle groups? The B–2 for the B–52 and B–1 bombers? The B–2 for naval attack aircraft such as the F–18 and the A–6? The B–2 for the C–17 and other aircraft? The B–2 for foreign bases?

It is like a vegomatic that is featured on late-night television: it slices, it dices, it can do just about everything imaginable. That is what the Air Force is now coming in to offer the Senate and the House as a rationale—it can do everything all of these other systems can do.

One of the great ironies is the Senate Armed Services Committee in its report is saying to us: Pentagon, what now can we cut out from among all of these systems, the attack aircraft, the fighter aircraft, the carrier-based aviation, the B–52's, naval attack aircraft, the C–17, foreign bases. Ironically, while we are told that the B–2 will be a substitute for all of these other systems—it can carry out all of these other missions—yet there is no recommendation that we terminate these other programs.

There is no recommendation that we get rid of an ATF [advanced tactical fighter] or the new multirole fighter. There is no recommendation that we eliminate some of our foreign bases as a tradeoff for the B–2. We are closing down domestic bases. I do not see any recommendations about closing down foreign bases as a tradeoff for the B–2. I do not see any recommendations to cut back on our carrier battle groups in order to accommodate the B–2. So what they are saying is we can do all of these other missions but we are not going to cut back on all of those other systems.

Something has to give. Apparently they are prepared at some point in time, not now, to say let us cut all of these other systems because the B–2 can fly all the way from Omaha to Moscow, or Kiev maybe, where the President was yesterday, fly all over and back. We do not need these carrier battle groups. We do not need the aircraft carriers. We do not need the foreign bases. We do not need the airlift or the C–17, none of that. We can just use the B–2 bomber.

Mr. President, the only thing that seems to be consistent in the Air Force's approach is that there is a constantly shifting rationale being offered. When the B–2 was originally proposed, one of its primary missions was going to do what? It was going to hunt down mobile missiles. Do you know why? The Soviets read the Scowcroft Commission report and decided the Commission was right. We all had to have mobility; mobility builds stability; let us go mobile with our ICBM's. There came the rationale we have to have the B–2 to hunt down these mobile missiles.

Well, we did not need the war with Iraq to disprove the ability of our aircraft to hunt down mobile missiles. The most optimum circumstances available: open desert, no trees, no varying terrain, very little ability to hide, and we still could not find where they were launching those mobile missiles, even with our Stealth aircraft. So suddenly we see that rationale disappear, disappear. It is no longer a primary mission for the B–2 to hunt mobile. Oh, no, they have given up on that. Now we see the major mission of the B–2 bomber has become to carry out conventional bombing.

I think it is revealing to go back and recall some of the Pentagon's past statements on this subject. The Senator from Kansas wants to know why are we taking so much time. I might point out that I consumed, I think, a total of 4 minutes yesterday on SDI. So I tried to make as surgical an argument as I could in defense of what the committee had done.

But on the other hand, we do have some explaining to do, not only to ourselves but the American people, so that there will be a record maintained and we can look back a couple of years from now and say "somebody ought to be held accountable." Someone should be held accountable for the decisions that are being made today in terms of what we are producing and what it is going to result in.

The Pentagon now argues conventional capability for the B–2 bomber. Back in November of 1981, the Pentagon was seeking to convince Congress to resurrect the B–1 bomber. I remember that very well. In fact they persuaded me: We have to bring the B–1 back.

The Secretary of Defense sought to sway wavering Senators by testifying that "the much more likely scenario and use of the B–1B will be as a conventional plane.—The B–1B with its ability to do all kinds of conventional missions is an enormously useful plane."

Those are the words of the Secretary of Defense at that time. And then he was pressed by some of the skeptical Senators on whether the B–2 could not conduct these missions. The Secretary of Defense testified that while the B–2 could conduct conventional missions, "it would not be the optimum or the best use."

And here we are now 10 years later, with the Pentagon trying to convince wavering Senators to buy yet another new bomber with the argument that it is going to be the ultimate conventional bomber. Never mind that back in 1981 we were told the B–2 would not be an optimal conventional bomber, that it would in fact not be as good as the B–1 in a conventional role. Never mind that 5 years after the B–1 was deployed, we are still waiting for it to acquire a conventional capability.

Mr. President, the Pentagon is not asking us to engage in the willful suspension of disbelief. We are being asked to ignore history. Indeed, for many of us who have been here for a while, we are being asked to ignore our own experience. For those who are willing to do so, I want to add a few more notes of caution.

I have been told, for example, that contractor lobbyists have been visiting staffs and perhaps even some Senators telling them that the B–2 will be able to carry out conventional missions on the day it is deployed. I want to remind my colleagues that in 1982 the Air Force testified as follows: "By its initial operating capability [IOC] the B–1B will be certified for the carriage and release/launch of at least two conventional weapons." The fact is, of course, that at IOC in September of 1986, the B–1B was not certified to carry any conventional weapons. And nearly 5 years after the IOC, while the B–1B has finally been certified to carry two conventional weapons, it is still not able to conduct any conventional missions.

If the history of the B–1 is not enough to reveal as faulty any claim that the B–2 is going to be able to conduct conventional missions as soon as it is deployed, then the Air Force's documents on the B–2 ought to persuade us. The systems maturity matrix for the B–2 shows it will be ready only for nuclear war missions when it is deployed. That is the Air Force's own document.

As has been the case with the B–1, it is going to be years, years after the B–2 is deployed before it is actually able to conduct conventional missions—that is, before the B–2 crews are trained for conventional missions, conventional weapons certified for the B–2 and all the other necessary steps are taken.

And when that B–2 finally acquires a conventional capability sometime in the next century, the decisionmakers are still going to face the very difficult choice of disrupting the nuclear war plan by shifting B–2 aircraft to conventional missions.

I want to remind my colleagues the fact is that never in the nuclear age has the United States employed its newest strategic bomber for conventional missions. Back during the Korean war, the B–26 was kept on nuclear alert. The older bombers, the B–29's, were sent into combat.

During the Vietnam war, the late model B–52G's and H's were kept on nuclear alert, and the older version B–52–D's and F's were instead used in combat.

During the gulf war, the B–1B was kept on U.S. nuclear alert, and B–52's were sent into combat.

So if this unbroken trend continues the B–2 would not be employed in a conventional mission until we deploy the B–3 or whatever it is that is going to succeed the B–2.

I am going to pass over for the moment some mismanagement at Northrop, other than calling my colleagues attention to it. It has been written about fairly extensively, not only in various news articles, but also by the General Accounting Office, which has provided some documents which show there are serious problems with some of the Northrop estimates and some of Northrop's management.

I will not take my colleagues' time to go into that right now. I would like instead to just turn briefly, if I could, to the status of the B–2 testing and recent GAO testimony on this subject.

Last month, Secretary Rice testified before the Armed Services Committee that "B–2 testing demonstrates that the B–2 works." In support of that statement, Secretary Rice quoted very briefly from the Defense Science Board report that reviewed the early block 2 testing.

This month, however, we have heard testimony from the GAO that calls that conclusion into question. The GAO testimony has a bit more substance, I would submit, than the Air Force testimony does. We recently received unclassified extracts from the Defense Science Board report that reveals a much different picture than what the Air Force has suggested. GAO has testified that "the flight test program has not progressed as planned." When the flight test program began in July 1989, it was planned to be completed by 1993. This has now slipped to 1996. To date, only one-half as many test hours have been flown as the July 1989 plan called for.

Air vehicle three, the first avionics equipped B–2, was supposed to have 6 months of flight tests by now. Instead, it has flown just a couple of times. The remaining three test planes may be delivered as much as 11 months later than the July 1989 plan called for. These delays are critical since the majority of the operationally realistic testing of the integrated system it planned to be conducted on the last two planes. The latest delays mean the testing is now not to be done until 1995 and 1996. The GAO concludes by noting that given the planned rate of production "The Air Force could make commitments to acquire well over two-thirds of the production bombers before there is a reasonable assurance through operational tests that the B–2 can accomplish its expected mission." This is Yogi Berra's deja vu all over again.

Mr. President, I will not at this time go into the Defense Science Board report. I will reserve that for comment later on during the course of the debate.

I finally want to raise one issue: What price to penetrate Soviet airspace? Really, at the heart of this entire debate is the issue of the triad.

Since the early 1960's, U.S. nuclear weapons policy has been based on the concept of a triad of land-based missiles, submarine-based missiles, and bombers—with the assumption being that these bombers must be penetrating bombers.

The redundancy and mutually reinforcing characteristics of the triad offers assurance that, even in the event of a bolt from the blue, a successful first strike could not be conducted against all elements of our strategic nuclear forces.

As the Scowcroft Commission summarized the matter:

The existence of several strategic forces requires the Soviets to solve a number of different problems in seeking to attack our forces and, therefore, each component of our forces serves as a hedge against possible Soviet successes in threatening the other components.

And each component has its own strengths, which helps to compensate for the weakness of the other components.

ICBM's are fast flying, accurate and destructive, and are supported by excellent communication links; but they are vulnerable to attack.

SLBM's are fast flying and highly survivable; but historically they have been less accurate, unable to attack hardened targets, and their communication links are less reliable than for ICBM's;

Bombers can deliver weapons accurately and are slow flying and recallable, which makes them stabilizing, though it also means they are less able to attack time urgent targets if that is necessary.

The assumption has long been that for a bomber to fulfill this role it would have to be able to penetrate deep into Soviet airspace.

And since the B–52 could not effectively penetrate Soviet air defenses into the 1990's, a new bomber—the B–1—was needed.

But while the B–1 was to be able to penetrate effectively well into the 1990's, it would not be able to do so much beyond that and so another new bomber, the B–2, would be needed.

I will pass over the technical arguments on whether the B–2 will be able to penetrate Soviet air defenses effectively over the length of its intended operational life and for now simply ask: Why do we have to have a penetrating bomber at all?

The assumption—and it has been merely an assumption—that bombers need to penetrate was chiseled into marble at the same time the triad concept was enshrined, a time when alternative air-breathing systems were not a realistic option. And so, if we were going to have a hedge against the failure of ballistic missiles, it would have to be a bomber that could penetrate all the way to Moscow, to Leningrad—St. Petersburg—and to military targets throughout the Soviet Union.

This assumption, however, began to erode in the mid-1980's with the deployment of significant numbers of a modern air-launched cruise missile, the ALCM–B. While often thought of as a 1970's, Ford-Carter-era weapon, the ALCM–B became operational only in December 1982, and its deployment was completed by the Bush administration less than 2 years ago. By allowing a bomber to stand off while attacking targets in the Soviet Union, the ALCM–B has given B–52's a potent nuclear warfighting capability for well into the future despite the B–52's diminished capability to penetrate many areas of the Soviet Union.

With the deployment of the stealthy advanced cruise missile, or ACM, in the coming years, the assumption about the need for a penetrating bomber will erode even further. The ACM will be truly stealthy. The Air Force description is that the ACM "is nearly undetectable except at the very closest of ranges" and that it is designed to meet the threat well into the next century. It will have greater range, allowing bombers to launch at a greater standoff distance from Soviet borders while being able to reach more targets at the same time. According to testimony given last year, a single B–52 will be able to stand off at a safe distance and attack Moscow and Vladivostok and return to the United States unrefueled. The ACM will also provide enhanced accuracy, hard target capability, and operational flexibility.

Some have even argued that the introduction of modern cruise missiles has transformed the triad into a quadrad or even a pentad, if SLCM's are taken into account. Regardless of the terminology or concept one accepts, there can be no question that modern cruise missiles have transformed the nature of air breathing nuclear forces.

Developments in other components of the triad also affect the type of bomber force we need, since reducing the weaknesses in SLBM and ICBM legs lessens the need for compensating strengths in the bomber leg. And developments in the two ballistic missile legs can and are eroding the asssumption that a penetrating bomber is needed.

With the deployment of the D–5, SLBM's for the first time are acquiring hard-target capabilities previously restricted to ICBM's and bombers. Communication weaknesses have also been reduced in recent years and further improvements could be made.

Similarly, we can proceed with plans to make our ICBM force less vulnerable.

While the decision a decade and a half ago to forego the penetrating bomber might have been premature, the tremendous investment we have made since then in strategic forces has changed the situation dramatically.

And the world has changed dramatically, as well. At a time when the Soviet Union has joined the G–7½, do we really need to proceed with every strategic nuclear program conceived at the height of the cold war?

Mr. President, I think the answer is obvious. The enhancements we have made and are making in our nuclear forces, combined with the recent and ongoing changes in the world, will allow us to maintain our security even if we forego a fleet of billion-dollar aircraft.

And I think we have to ask the question: If we are willing now to spend the money to procure 75 B–2's, what do we eliminate to pay for it? Do we trade off tactical aircraft, C–17's, naval aircraft, carrier battle groups, foreign bases? This is what we are told says this bomber can replace.

Are we prepared to say all of these other things have to be sacrified to build a B–2 to carry out a mission that can be carried out by other systems we have?

I submit to you this program is not a wise expenditure of the taxpayers' dollars. We can accomplish the same result with something for which we have already spent our dollars. And we can, I believe, put ourselves in a better position to argue to the American people that we are exercising the kind of prudence and oversight that is responsible to build the kind of systems that we need, and not those that are on the drawing boards from years past and that now are no longer necessary, in my judgment.

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

The PRESIDING OFFICER (Mr. BINGAMAN). Who yield time?

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. How much time does the Senator from Vermont have remaining?

The PRESIDING OFFICER. Seventy-six minutes and 29 seconds.

Mr. LEAHY. Mr. President, I yield 10 minutes of that time to the Senator from Tennessee [Mr. SASSER] and leave him in control of the remainder of my time.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. SASSER. I thank the Senator from Vermont.

Mr. President, I rise today in support of the amendment to limit our Nation's fleet of B–2 bombers to 15 aircraft and, frankly, I have long questioned the need even for that number. It seems that we do this dance over the B–2 funding every year, and very little changes. The plane is still too expensive, as it has been from the outset. Its mission still remains ill-defined. And the only thing that changes is that we are less able to afford it now than we were in the past, because the deficits are getting larger. They are predicted to run, in fiscal year 1992, to $348 billion. The only thing that is changing in this argument is that the money is getting tighter, and the deficits are getting larger.

For the last 2 years, a substantial majority of the Congress has opposed this aircraft. Yet, due to the efforts of a well-positioned minority here we are, once again, debating whether to authorize an unprecented level of funding for the B–2 program.

As I stand here today, 15 B–2 bombers have been authorized at a total cost of $30.8 billion. The Pentagon wants to spend another $35 billion to bring the total to 75 aircraft. Proponents come to us and give us the same tired old argument about increasing efficiencies and decreasing the cost per plane the more we build. If we follow that logic, why do we not just build 500 of them. Think how much money we can save if we built 500 B–2's.

Of course, that would consume a very substantial portion of the gross national product. Of course, that would increase the deficit by a gargantuan

sum. But maybe we can give the Japanese a security lien on the B–2's, as we borrowed the money from them to finance them.

By ending this program with 15 B–2 bombers, we would save $30 billion. That is true efficiency; that is true savings. As we face record deficits, as the red ink flows ever broader, that is the only responsible course for this Nation to take.

Make no mistake about it, by authorizing 15 B–2's, if they perform as the proponents say they are to perform—and there is some doubt about that—we will still be buying an enormous amount of stealthy firepower.

According to the Pentagon itself, which so desperately wants this aircraft, each B–2 has the same payload capacity as 8 to 10 F–117 Stealth fighters. If this is true, the 15 B–2's that we have authorized to date have the same capacity to carry bomb tonnage, weapons, and missiles, as 120 to 150 F–17's. That is what you get with the 15 B–2 bombers we have already authorized to the tune of $30 billion. You get the equivalent of 120 to 150 F–17's.

Recall that we decimated the world's fourth largest military power with 40 to 45 F–17's. We defeated an air defense network that the general who commanded the air campaign against Iraq, Gen. Charles A. Horner, called, "twice as dense" as that deployed by the Warsaw Pact during the cold war.

In other words, with the 15 B–2's that we have authorized, the United States Air Force has the capacity to engage three countries with the size of Iraq's forces simultaneously.

Now, the fact that we can search the globe and not find such an enemy is another issue altogether, and we are not debating that today. But the fundamental question remains unanswered: Just what is the B–2's mission now that the cold war is over? Do we plan to use the B–2 to bomb the bread lines in Moscow? Is that what we are going to do with them? To the tune of billions and billions of dollars?

Listen to the threat assessment of this country's senior military official, a distinguished chairman of the Joint Chiefs of Staff. In a recent interview, General Colin Powell said, "I'm running out of demons; I'm running out of villains. I'm down to Castro and Kim Ill Sung." I might add that Kim Ill Sung is a very old man now; he is in his eighties.

Yet, the same cold war arguments for the B–2 continues to be raised. I continue to find them most unconvincing, indeed, curious and deficient.

The expectation that the Soviets will further modernize their air defenses is belied by the fact that they are coming to us hat-in-hand, broke, wondering how they are going to feed their own people, as I stand here on the floor of the U.S. Senate speaking. This is a race that they can no longer afford, and they know it. The arms race has absolutely defeated them. They are on their knees.

Just last night, on network news, were videos of crime rampant in Moscow; this is a nation that is disintegrating and crumbling right before our very eyes. Part of the problem was that they went broke in the arms race, competing with the United States of America. I say that any assumptions we make today about increased Soviet defense spending are dubious at best.

Well, some of the supporters realize that argument is losing any logic at all. So now they are saying that B–2's could be used for conventional missions, since we will not be using them for strategic nuclear missions against the Soviets.

But I submit that a conventional mission alone is not sufficient to continue with this highly expensive airplane program. The U.S. Air Force, the premier air force in the world, by any standards, far excelling in quality and quantity any other Air Force, has an arsenal of world-class aircraft that could be employed in conventional bombing missions. If the Gulf war demonstrated nothing, it demonstrated that.

The U.S. Air Force in conjunction with carrier aircraft piloted by Marine Corps and Navy pilots, totally dominated the air over Iraq from day 1, and this flying against an air defense system which the Air Force commander said was denser than we would experience over Europe in a cold war situation.

So we are certainly not hurting for capability. Quite the contrary. And we are certainly not resting on our laurels as the leading military Nation now in the world. This bill before us commits us to develop and produce the F–22, the next and most sophisticated generation of Stealth aircraft. But despite all those factors, the bill before us now aims to spend $5 billion on the B–2 this year, and to accelerate the rate of production.

Now, we toss these billions around here as if they are nothing, and when I go home and talk to my constituents they really cannot conceptualize $1 billion. What is it? A billion dollars is $1,000 million. And we are going to spend $5 billion this year in this bill on production of an airplane that we do not need and I submit has no mission.

In fact, the proposal sets us on an entirely new production schedule, one that actually leap-frogs ahead of the testing schedule. What happened to the fly-before-you-buy standard? According to the latest B–2 program summary, the Air Force plans to have authorization to build 71 percent of the bombers at a cost of $33.8 billion before the planned completion of the test and evaluation program in 1996.

This approach, Mr. President, directly refutes the fly-before-you-buy standard that the Armed Services Committee, on this very floor, pledged its allegiance to last year on this particular procurement program.

Now, the General Accounting Office has serious questions about increasing the production schedule. It questions whether the manufacturing process can be stabilized, whether the flight test schedule can be met, whether the risks of accelerating investment at such an early stage of testing are worth taking.

Why the rush to production? If nothing else came out of the end of the cold war, it means that we could take time to test systems, to test systems thoroughly before we spend multiples of billions of dollars moving into full-scale production.

This is not World War II we are faced with. This is not the Korean war. This is not even the war in Vietnam. We have virtually no threats before us at the moment, and we certainly have no threats that would call for a speeded up introduction of B–2's.

Mr. President, the simple facts are that the U.S. Government cannot afford to buy 60 more B–2 bombers. The Treasury of the United States is operating at a deficit. We are going to have a deficit next year of $348 billion.

We are spending the money that we take from the citizens of this country through the Social Security System and telling them: When you get ready to retire, we are going to give it back to you. We are spending that money, and we are spending it on things like B–2 bombers.

The truth is, we cannot afford the B–2. That is the bad news for the proponents. The good news is this: We do not need 60 more B–2 bombers, and the arguments to the contrary do not make fiscal sense, and they just do not add up strategically, either.

Let us go back to yesterday, to that momentous occasion in Moscow, a moment I think that really all of the peoples of the world can look at and take some solace from. Listen to the voices at the signing of the Strategic Arms Reduction Treaty yesterday in the Soviet Union.

Mikhail Gorbachev, signing the treaty on behalf of the Union of Soviet Sovereign Republics, here is what the leader of that nation said:

> We are dismantling today the infrastructure of fear that has ruled the world.

George Herbert Walker Bush, the President of the United States, representing not only the people of this country, but the people of all the free world yesterday in Moscow, stated:

> This is a major step forward for our mutual security and the cause of peace.

And indeed it was.

And Mikhail Gorbachev could not restrain himself, and he added:

> Thank God that we have stopped this.

In the deepest, darkest days of the cold war, when Joseph Stalin ruled

from the Kremlin, perhaps even when Brezhnev, a toddering old man was leading what Ronald Reagan called the evil empire, perhaps then there might have been some justification that would force this Nation to spend $65 billion on a nuclear bomber; perhaps then such expenditures could have been justified.

Today, Mr. President, there is simply no threat on this Earth that justifies us spending billions of dollars to procure an aircraft we do not need, an aircraft that really has no mission, an aircraft which, I predict, Mr. President, will be just as obsolescent as the B–1 bomber is today.

We all remember the arguments for the B–1: How necessary that was to the security of the United States, how we could not do without it, how it would be a real threat to our security if there were no B–1 in our arsenal. But we seemed to do pretty well in Iraq without the B–1 bomber. None were seen there. The truth is, the B–1 has been the great white elephant, an expenditure of money that we did not need to make, and for which we gained very little.

Let us not go down that road again, I urge my colleagues, by procuring additional B–2 bombers.

Mr. President, I see the distinguished Senator from Vermont has entered the Chamber.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I understand that the opponents of the Leahy-Cohen amendment wish time.

So I yield to them, and that of course will be on their time.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, I will shortly yield some time to the Senator from California [Mr. SEYMOUR]. Let me just, if I can, take a few moments, before doing that, to just comment on some of the remarks that have been made in the last few minutes by those who are proposing the amendment to terminate the B–2.

The Senator from Tennessee indicated that there is no threat present in the world today that justifies spending for the B–2; that the evidence of bread lines in Moscow, the Soviets coming to the United States with hat in hand indicate that the Soviets are broke and therefore we are simply spending money for a deterrence or a system which will not be necessary.

It may be true, and it is true, I believe, that there are breadlines in the Soviet Union, and that the Soviets are coming to the United States and the world hat in hand, and that they are having severe financial problems. But the reason that is true, and one of the significant reasons that is true, is because the Soviets continue to spend their capital on strategic systems whose production goes on unabated.

And while we wish that it were true that no longer is there a threat and while we urge the Soviets to redirect their expenditure of funds to eliminating breadlines, eliminating their debt, and removing the requirement that they come to us hat in hand, the fact of the matter is that Soviet production, the whole number of the strategic system, continues unabated.

In the Gorbachev era, the Soviet production of submarine-launched ballistic missiles—this is the Gorbachev era now; this is not the cold war era, this is the so-called postcold war era under Gorbachev—the Soviets have produced a total to date of 490 submarine-launched ballistic missiles while the United States has produced 250. In the area of short-range ballistic missiles, the Soviets have produced, since President Gorbachev assumed power, 3,900 short-range ballistic missiles. The United States has produced zero. Of those 3,900, 600 were produced in 1990. Breadlines, to be sure, but the reason those breadlines exist is that production goes on unabated.

In terms of Soviet submarine production in the Gorbachev era, a total of 54 new submarines, 12 of which were produced and put on line in 1990, compared to only 4 in the United States in 1990 or 24 total.

In the area of Soviet bomber production in the Gorbachev era, a total of 450 new Soviet bombers, while the United States has added 104. In 1990, the year of the breadline, the year of hat in hand, the Soviets produced 70 bombers while the United States produced one.

And in ICBM production, in 1990, the Soviets produced 125 and the United States 12, a total in the Gorbachev era of 715 for the Soviets and 68 for the United States.

Now, I think all of us wish that those numbers were zero and zero. But clearly the argument that the Soviets are broke and therefore the assumption—which I think is an erroneous assumption, not backed up by the facts—that no threat exists any longer that the United States needs to provide a deterrence for, is an erroneous assumption, erroenous and not supported by the facts because clearly Soviet production in these areas, while curious to many of us, while unexplainable to many of us, are nevertheless a reality.

The Senator from Maine indicated a couple of things that I would like to briefly respond to. One was the assertion or the statement that the B–2 is not qualified for conventional weapons when it begins service in the summer of 1993. And that is true. But the B–2 schedule for qualification for conventional weapons is on schedule, and they will be compatible and able to be fully qualified to carry conventional weapons by the fall of 1995.

Responding to the statement that the testing is inadequate and the test planes are late, let me just recite some of the testing that has been accomplished on the B–2, which is the most expensive testing program and tested aircraft in history.

The B–2 has undergone 24,000 hours of wind tunnel tests; 44,000 hours of avionics tests; 305 flights of avionics flight tests; radar inflight testing, 1,004 hours, all 19 modes; navigation inflight testing, 649 hours, fully alligned in air; air flight control tests, 6,000 hours; radar cross-section testing, 30,000 hours; structure tests, 168,000 specimens tested; flight tests as of July 19 of this year, 63 flights of three aircraft for 261 hours; all flight controls have been demonstrated; flutter qualities have been demonstrated in the excellent category; sideslip qualities demonstrated; autopilot has been demonstrated; unrefueled coast to coast has been accomplished on two occasions, environmental control system has been demonstrated to 40,000 feet; primary landing gear has been demonstrated; emergency landing gear has been demonstrated; 90 pecent of the flight envelope has been demonstrated; flying qualities which are excellent from 0 to 45,000 feet actually tested; flying qualities are excellent up to 400 knots; engines have been stopped and restarted in the air: The B–2 is fully qualified to refuel with the KC–135; fully qualified to refuel with the KC–10; bomb bay door opening has been demonstrated at 35,000 feet, at 0.6 mach; redundant flight safety systems demonstrated; and the radar cross section has been demonstrated, as predicted.

So, Mr. President, the testing of the B–2 bomber has been more extensive than any other aircraft tested in history, and it has performed, in almost every instance, above expectations.

Mr. President, I have other points I would like to make, but I think at this time I will yield 10 minutes to the Senator from California [Mr. SEYMOUR].

The PRESIDING OFFICER. The Senator from California is recognized for 10 minutes.

Mr. SEYMOUR. Thank you very much, Mr. President. And I thank Senator COATS for yielding me this time.

I have listened closely to the debate on the B–2, Mr. President, as I did on SDI. I found myself, as the junior Senator from California—of course, hopeful one day to be the senior Senator from California, but also the second most junior member and Senator of this august body—thinking about what is the single most important responsibility that we have. And, Lord knows, we have a myriad of tremendous challenges and responsibilities that we face, whether it is health and welfare, or education, or criminal justice.

But it occurs to me that the single most important responsibility we have is defending this Nation so that we can perpetuate her freedom. Therefore, it is altogether appropriate that this debate should take place and we should hear all sides of the arguments.

As I listen to the arguments, I hear that we cannot afford the B–2, and I hear that the war is over so why do we need it? I think back just a short time ago, when only 48 hours after I was sworn in as the junior Senator from California I had to cast my first vote on a war resolution that ultimatly propelled us into a war in the Persian Gulf. And I think about the arguments that probably took place on this floor relative to the cost, or perhaps the inefficiency, or perhaps the folly of a Patriot missile. In fact, I am told by my senior colleagues, that that was a very close vote on the Patriot missile.

As we look over our shoulders, let us not forget it was but months ago that all of us stood and cheered, along with America, because we were so proud of not only the performance of our brave men and women, but because of the performance of our technology.

So, if in fact, it is true that our greatest single responsibility is the defense of this Nation, I say we cannot afford not to make this investment in the B–2. I believe the B–2 represents the type of strategic investment that America should make, precisely when we have fewer defense dollars and more potential threats to our national security. Think of the dollars—yes, they are big dollars, billions of dollars. I have a tough time understanding and really appreciating $1 billion. But think of it in terms of how we spend our money.

I look in this report, and I shall read from it:

Robert Reischauer, Director of the Congressional Budget Office, stated before the House Budget Committee on February 27, 1991, that Operations Desert Shield and Desert Storm cost $45 billion since October 1990. He also stated that if fighting had continued to the end of March 1991 the cost would have increased another $15 billion. For every day the war could be shortened, an additional B–2 could be purchased.

The war is over so why do we need this?

We all know the international environment of today is a powder keg, loaded with the bad intentions of existing and would-be tyrants. We did not even know the name—I did not know the name of Saddam Hussein, 18 months ago. He is a bloody, violent and brutal dictator who seemed to come out of nowhere and initiate the battle that we so bravely fought in the Persian Gulf.

Ten years ago, we had a clear picture of the identity and motives of the enemy. But now, he could roam anywhere on an international landscape plunged in turmoil—we could find him in North America, the Middle East, Southern Asia, or even in a post-Gorbachev Soviet leadership.

The point, Mr. President, is that none of us can pinpoint the source of the next major threat to the security interests of the United States or those of our allies. But in the B–2 advanced technology bomber, we have a system that can meet any of these unknown threats with swiftness, accuracy, and reliability.

The B–2 is a unique product of both the world that we hope to leave and the one we are now entering.

I heard the distinguished Senator from Maine [Mr. COHEN] say, do we need the B–2? He said science has changed and technology has changed. Indeed it has. And thank goodness. Thank goodness technology and science has changed, so we have the opportunity to defend our Nation with the highest piece of war technology we could possibly have in our arsenal, the B–2.

To those who understand the capabilities of the B–2 but wonder whether existing strategic bombers or cruise missiles can adequately provide for our defense, allow me to clarify the following points.

The B–2 has five or six times the range and 10 times the payload of the only other Stealth aircraft in the Pentagon's inventory, the F–117, which we saw perform so well in the Persian Gulf.

The B–2 is the only aircraft that can fly anywhere in the world from an American base and return home with the need for just one aerial refueling.

The B–2 is the one aircraft that would place the fewest pilot lives at risk on any strategic strike mission.

The B–2 will emerge as the most accurate, survivable, and lethal air-breathing system in the defense department's inventory.

Finally, Mr. President, we must dispel several myths about the cost of the B–2. The chart to my left lists the seven major strategic military systems that the United States has bought in the nuclear age. Each of these figures is based on the peak acquisition years for the respective programs.

Only yesterday, President Bush signed the first arms control treaty in the history of United States-Soviet relations that actually reduced the number of nuclear weapons on both sides rather than simply limited their growth. And this document counts a heavy penetrating bomber such as the B–2 as one delivery vehicle regardless of the payload that it can carry.

We wrote this arithmetic into the START Treaty because of the slow, recallable, and second-strike nature of strategic bombers. In this light, the B–2 fits perfectly into the new Soviet-American arms control regime that will ultimately break the chains of the cold war.

Indeed, it can protect territories and interests far away from our homeland, but it is not fast enough to initiate a first strike against the Soviet Union. So I have little patience with the arguments made by some in this body that the B–2 represents a menacing or needless weapon of mass destruction.

The B–2, Mr. President, is not a weapon of destruction, but a weapon of defense.

This aircraft, therefore, bridges a Soviet-American relationship struggling to be born with the distant threats that will continue to hold our international interests at risk.

At the rate of procurement requested by the President, the B–2 thus far has consumed the second lowest percentage of the country's gross national product while giving us the greatest range, the most stealthiness, and providing both a nuclear and conventional capability.

This chart also reveals that the percentage of the defense budget devoted to the B–2 is almost identical to the percentages allocated for the other systems—weapons, in many cases, that have the enthusiastic support of the most ardent B–2 opponents.

The chart to my right, Mr. President, shows on a comparative basis the cost growth history of the B–2 program during the 1980's. Note that the prices for a loaf of bread and private college tuition grew at almost four times the rate of the cost of the B–2.

My goal is not to compare the need for the B–2 with the need for tuition or bread, but to demonstrate that the expense of this program has not spiraled out of control.

The B–2, Mr. President, does not drain our national wealth or take resources away from Federal domestic programs.

It costs less than 1½ percent of our entire defense budget.

So the issue before us is not whether we can afford the B–2, but whether we want it, and the arguments from an arms control, mission need, and technological point of view are compelling.

In closing, Mr. President, I want to remind my colleagues of the labor force implications of this vote. Yes, I admit I am from California. Yes, this B–2 is important to the people of California, and particularly those who are so proudly dedicated to work on the B–2 program. For months, I have been meeting with union leaders from my State who rely on the B–2 program. They are dedicated, hard-working men and women who represent the core of the American aerospace sector. Their toils every day bring us closer to the goal of developing military technologies that have commercial applications and are the key to the Nation's export competitiveness in the overseas marketplace.

When we vote today, think about them and their quiet, yet powerful, contributions to the country's industrial base. They live in almost every State of the union, and their manufacturing, engineering, quality control, avionics, and other critical skills will make them the unsung heroes of America's economic future.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. I yield, how much time to the Senator from Nebraska?

Mr. EXON. Mr. President, I yield myself whatever time I need to make a presentation.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from Nebraska is recognized.

Mr. EXON. Mr. President, I rise in opposition to the amendment that is presently pending before the Senate. In my judgment, the need for the B–2 is clear and the case for acquiring the full buy of 75 of the B–2's is very compelling.

Let us begin with a proven fact. Stealth works. The American public got to see how well the Stealth works nightly on the television news during Operation Desert Storm. The F–117 Stealth fighter bombers carried out constant attacks on or around Baghdad when the air defenses were still very robust. Although only 3 percent of the total aircraft available, the F–117 carried out over 30 percent of the attacks during the opening phase of the air war.

Now even the B–2 opponents seem to concede, however grudgingly, that Stealth works. The B–2 opponents do not like to admit that, Mr. President, because that leaves them having to defend their position that Stealth is great but only for little airplanes and not for big bombers.

Mr. President, the B–2 opponents do not like to get into this kind of an argument because they know their case is very poor. The F–117 is a limited range—I emphasize limited range—night, clear weather, medium-altitude attack aircraft that carries only two weapons. Even in the Iraqi desert many F–117 missions were canceled or aborted by bad weather, low clouds and rain.

Mr. President, the B–2, in contrast, is a large-payload, long-range, all-weather, all-altitude bomber, and can carry up to 80 weapons. That is right, Mr. President, up to 80 weapons and not just 2 as did the well-performing Stealth aircraft that we know of as the F–117.

Moreover, the F–117 has only first-generation Stealth treatment, while the B–2 has third generation, low observability treatment more comprehensively applied. Thus, the B–2 will be able to venture into harm's way under lots of circumstances where even the F–117's would not be used.

Finally, the B–2 has a decisive advantage over the F–117 in the early application of firepower. Before they can be used, the F–117, like all tactical aircraft, have to be ferried to the theater and they all have their logistic and support equipment and support personnel and spare parts airlifted over before they are ready and, therefore, sustain combat.

As the tragic Scud attacks on Dhahran showed, this puts plenty of American lives at risk in the theater of operation. The B–2, by contrast, can operate from outside the theater initially. It can be dropping bombs in hours rather than days or weeks and puts only two pilots—two pilots, Mr. President—at risk to theater range missiles and aircraft.

Given all of this, the argument that the B–2 opponents most likely will make is the simple and oft-repeated refrain: It cost too much. It costs too much. It cost too much. But you will notice, Mr. President, that the B–2 opponents never talk about effectiveness. They just talk about costs. I intend to focus on cost effectiveness for a few minutes. Behind me is a chart that I would like to reference and will be referencing for the next minute or so.

The Air Force produced this chart. It is based on fact and it shows in testimony that they have given to the Armed Services Committee that four almost equally effective forces, and I talk about those four effective forces by describing on the chart the so-called standard package to the left, another standard package but with precision weapons. That is basically what we used in the Persian Gulf War.

The first chart, standard package without precision weapons, entails 75 aircraft. All the pilots that were on all of those planes and all of the support personnel to back them up, and likewise the next chart is the same force but reduced because they use precision weapons.

The two left-hand charts then that I have just referenced, Mr. President, is the old way of fighting a war using a large number of nonstealth attack aircraft which then have to be defended to make the mission successful, hopefully, by F–15 fighters, F–4G Weasels, EF–111 Jammers, and supported by lots of tankers, as demonstrated in both of these charts.

Depending on whether or not the attack aircraft uses precision guided munitions, once again in the second chart, we need to have either 75 aircraft, as embodied here, or 55 aircraft in the second column. That is the old way of fighting a war, and two different options of doing that.

Earlier I said both of these are almost equally effective because when one of these non-stealth packages, no stealthiness in either one of these, when either one of those nonstealthy packages was sent to destroy a set of heavily defended targets in Iraq, the Iraq defenders, in some cases, were so fierce that this nonstealthy armada of 75 in the first chart and 55 in the second chart could not complete the mission and could not complete the attack.

Actually, what happened then was since the particular mission or missions were so important that the Air Force, rightfully, sent in eight F–117's of our stealthy aircraft, which is in the third column, backed up by only two tanker aircraft. Mr. President, they did the job. Let me emphasize this once again.

When the 75 airplanes with all of the risks and expense involved could not do the job, and when the 55 aircraft with all their pilots and expenses and backup could not do the job, the mission was accomplished with 8 F–117's backed up by 2 tankers.

Finally, Mr. President, in the right-hand column of the chart the Air Force shows that two, just 2 B–2's doing the same job with a total of 2 pilots and likewise their backup support systems that obviously would be far smaller then either the 75 armada or the 55 armada, the two B–2's on the extreme right hand of this chart did the job that 75 aircraft did here, that 55 aircraft did here, and that 10 aircraft did here, emphasizing more than anything else the value of Stealth, even with the F–117 which is not nearly as stealthy as the B–2.

The facts are, Mr. President, that one, one B–2 could have done what these two big armadas and this one smaller armada of 10 planes could do. Why do we show two? Because on any of the missions we are talking about where we are comparing apples with apples, the Air Force would have sent in two to make sure that the job was done in case something happened to the first aircraft.

Nonetheless, let us take these as equal capability cases and now ask which costs more? I think you will find the answer surprising, Mr. President. It might come as a surprise to the Senate. It might come as a surprise to the people of the United States of America. It might even come as a surprise to the Commander in Chief, who, in the opinion of this Senator, has not been as upfront talking to the American people, selling the advantages of the B–2 program.

Let us start with operations and support, or as we generally refer to them O&S costs to keep each of the four aggregations of aircraft in the inventory for 20 years: $4.2 billion for operations and support costs for this big 75 armada—$4.2 billion in operations and support costs—for a 20-year period; $3.4 billion, Mr. President, for the smaller second 55 armada; $740 million, Mr. President, for the third armada, the 8 F–117's and the 2 support aircraft in the form of fuelers, and, Mr. President, only $308 million for one of the B–2's.

Mr. President, I noted that some have said we own already the old aircraft. That is true. Likewise, Mr. President, I would like to point out, of the totals that I have just given, with the very limited cost of only one or two of the B–2 aircraft, the 20-year costs for maintaining and flying those is less than one-tenth—is less than one-tenth, Mr. President—of the cost of these other options if we continue to use the old way of fighting a war.

It is true that we do own this great armada and we have our money tied up in it. However, we own only 54, Mr. President, of the F–117's and only have authorized thus far purchase of 15 of the even more efficient and effective B–2's.

So let us see what we should possibly be doing in this area in the future. The committee bill provides that we buy more than the 54 F–117's and more than the 15 B–2's because we think those are important aircraft that we should build on.

So let us see what it costs to buy more of both. From the committee's bill, eight F–117's will cost about $350 million. What does the B–2 really cost? Surely not the $850 million that the B–2 opponents glibly toss around since that is a total program cost figure. And we already spent virtually all of the full-scale development money and part of the production money.

Proponents of this amendment propose to terminate, to end, to cease, the B–2 program at 15, just like the House of Representatives has already irresponsibly done. If they have their way, and if the House of Representatives has its way, then we would have only that very limited number of aircraft which would have a total net cost of $37.5 billion.

I might note with tongue in cheek, Mr. President, that the amendment's proponents thus manage to make even $850 million a copy, which is not honest when you recognize how the money has been expended, sound like a bargain since they are prepared to pay $2.5 billion—$2.5 billion, Mr. President—which is an awful lot of money, for each of the 15 B–2's that their amendment would produce.

Talk about expensive. The B–2 total program costs for all 75 B–2's is $64.8 billion. Subtracting the costs of stopping at only 15 B–2's, as this amendment would require, we will find that the remaining 60 B–2's could be acquired for another $27.3 billion.

Note, Mr. President, while the amendment before us would provide only 15 B–2's for $37 billion, we could have the next 60 B–2's at a cost of an additional $27 billion or $10 billion less to obtain four times—four times, Mr. President—as many aircraft.

The incremental cost to build therefore is a reality figure of $455 million for each additional B–2 as proposed if we go ahead with the full purchase of 75.

Now, Mr. President, let us add up the costs for the various options, including both O&S cost and the cost of buying the stealth aircraft. When we do this, we find that the F–117 option has a total cost of $1.1 billion; the B–2 option costs $1.2 billion—virtually the same cost. When we now consider the B–2's various advantages over the F–117—larger payload, longer range, early operations not dependent on theater bases, all weather attack, better stealth characteristics, it is clear that the B–2 is the better buy, given that we already have 54 F–117's but only 15 B–2's. Moreover, either stealth option is $2 to $3 billion cheaper than keeping all those "old way," nonstealthy aircraft in the inventory. Clearly, we could retire some nonstealthy aircraft and use the savings to defray some of the cost of stealthy aircraft.

So, Mr. President, the B–2 opponents are basically reduced to reciting over and over "$850 million a copy" as their slogan, since they have no real case for stopping the program. We need the B–2. It is expensive, to be sure. I do not believe when you look at the facts that even that can stand scrutiny.

But it's far greater effectiveness than other options means it is cost-effective with other stealthy aircraft options, and far superior to the old way of tactical air operations. Part of the expense of the program, Mr. President, is attributable to the development of the stealth technologies that give the B–2 its exceptional low-observability range and payload. Although all of these development costs have been charged to the B–2 program, they are broadly applicable to other stealth programs—and, Mr. President, to a wide variety of civilian programs as well. In this connection, Mr. President, I have received letters from representatives of the Air Line Pilots Association and the Seattle Professional Engineering Employees Association, both commenting on the civilian spinoffs from the B–2 program.

I ask unanimous consent that the letters addressed to me from these two organizations appear in the RECORD immediately following my remarks.

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

(See exhibit 1.)

Mr. EXON. In closing, Mr. President, let me finally address and say a few words about the B–2 and the START Treaty signed yesterday by the two Presidents in Moscow.

For several years, I have pointed out to all who would listen that the START Treaty was crafted to incorporate substantial numbers of B–2's. In fact, if we do not acquire the B–2 in substantial numbers, we will soon be reduced to an all cruise-missile-carrying bomber force. This tragic outcome will force us to choose between keeping the ninety-five 40-year-old B–52H's and keeping the 96 trouble-plagued B–1's that I reference briefly, although I suspect no one paid much attention to my remarks of yesterday. We would be forced to keep all of those. Under the START counting rules we cannot have both.

Without the B–2 under START, we will retain in the bomber inventory 170 fewer strategic bombers and over 3,400 fewer nuclear weapons than we are allowed with the B–2. In my view, these numbers alone suggest that ratification of the START Treaty would be in jeopardy if the B–2 is stopped at only 15 aircraft. When our negotiators worked out the terms of the treaty, they were told to assume that the B–2 would be built and that those 170 additional bombers and 3,400 additional weapons would be part of the U.S. force structure under START. Without them, without the B–2, I think DOD, the JCS, the White House, and the Senate are all going to have to face some tough questions.

So, Mr. President, there may well be much more at stake with the amendment before us than just the fate of the B–2.

Mr. President, I believe the case for the B–2 is strong, it will if we stop, look, and listen and take a look at it. I believe we need many more B–52's than the 15 currently on order. Therefore, I urge the Senate to defeat this amendment.

EXHIBIT 1

AIR LINE PILOTS ASSOCIATION,
*Herndon, VA, June 14, 1991.*

Hon. J. JAMES EXON,
*Chairman, Strategic Forces and Nuclear Deterrence, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR EXON: My name is Duane Woerth and I am a commercial airline pilot who flies for Northwest Airlines. I am also an Air National Guard Lt. Colonel who voluntarily served in Operation Desert Shield. In addition to having been the Chairman of the Northwest Pilots Master Executive Council (MEC), I am currently First Vice President of the Air Line Pilots Association, International.

On May 16, 1991 I presented testimony in favor of the B–2 to Senator Inouye and his Defense Appropriations subcommittee. I testified as part of a workforce coalition that has been actively supporting the defense budget over the last few years. My testimony was presented from the perspective of a pilot interested in the technological developments incorporated into the B–2. I would like to submit that testimony (see attachment) to be included in the record of the hearing before your committee scheduled for the 19th of June.

Since my appearance before Senator Inouye's subcommittee, our association published the June issue of the Air Line Pilot magazine which contains a feature article on the commercial implications of the B–2. I have enclosed a copy of the magazine.

We believe that the technological developments emerging from the stealth bomber will be of enormous value in the commercial viability of our nation's domestic airline companies. If there is any way that we can be of help in promoting the continued production on the B–2, we want to be involved. We would appreciate our testimony being included in the committee's deliberations.

Sincerely,

DUANE E. WOERTH,
*First Vice President.*

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TESTIMONY BY CAPT. DUANE E. WOERTH TO THE SENATE SUBCOMMITTEE ON DEFENSE APPROPRIATIONS, MAY 16, 1991

My name is Duane Woerth. I am here today to present testimony from two perspectives: The first as a commercial airline pilot who flies for Northwest Airlines; The second as an Air National Guard Lieutenant Colonel

who voluntarily served in Operation Desert Shield and who is about to retire after over 20 years of active and reserve duty primarily with the Strategic Air Command.

Also, in addition to having been the Chairman of the Northwest Pilots Master Executive Council (MEC), I am currently First Vice President of the Air Line Pilots Association, International.

A majority of the airline pilots, who man the cockpits of the commercial airplanes that make up the heart of America's civilian air carriers, have traditionally come from the military. Such being the case, as military pilots we have observed first-hand the impact that state-of-the-art high-technology has had on American air power. As commercial pilots we have come to rely on the technology and related developments in military aircraft, which ultimately appear in the commercial aircraft we fly.

Over the last few years, the Northwest pilots have taken an interest in the development and production of advanced military aircraft. When I served as Chairman of the Northwest Pilots Union, I became part of a workforce coalition dedicated to preserving that part of the defense budget dealing with the development of advanced aircraft. The Northwest pilots elected representatives worked cooperatively with union leaders from other unions to support aerospace programs that employed engineers, technical and professional workers. Through our participation in the workforce coalition we came to appreciate the value of those engaged in the production of fighters, bombers, and transports. We support them because they are American workers who build the aircraft that we fly—both military and commercial. More importantly, we support them because they have provided us the technology and the tools that have given our airline industry leadership status in the world of aviation.

I am here to testify in favor of the continued production of the B–2 program. The R&D benefits of the B–2 program extend across several different fields of technology, many of which are of direct benefit to pilots such as aerodynamics, propulsion, structural materials and manufacturing.

In preparing our testimony, Mr. Bofferding, the executive director of SPEEA, and I shared a common data base with respect to those elements that went into the engineering and production of the B–2. In the June issue of the Air Line Pilot, ALPA's monthly magazine, we will be publishing an article discussing the technology embodied in the B–2 and the many benefits that will flow to commercial aviation from it. This article was included as part of my written submission to the committee.

I will not repeat the details or the specific examples of the over 900 new materials and processes that were developed for the B–2—a truly astounding number—instead I will focus on how these developments are absolutely vital to the commercial aviation industry of this nation.

First, on a historical note it is important to remember that American aviation industry prominence after World War II did not happen by accident nor was it our manifest destiny. It was a direct and predictable result of the United States' commitment to military aviation supremacy through advanced technology that kept the United States on the leading edge. This development and production of advanced military aircraft resulted in our nation's ability to lead the world in the development and production of commercial airlines as well.

I am certain every member of the committee is very familar with the fact that commercial airliner sales represent one of the few remaining manufactured goods that contribute on the positive side of the United States' balance of trade ledger.

The key point is simply this—the success and future of commercial aviation in the United Sates has been, and will continue to be, totally wedded to our ability to stay ahead of our foreign competition through technology. Technology that has, to this point, come almost exclusively from defense appropriations.

What's at stake for commercial aviation? Everything—our entire future. Several members of this committee are also on other committees who have heard much testimony in recent months over the disastrous state of the airline industry today.

While I have the opportunity to address you, other hearings are in progress right now dealing with the problems of aging aircraft, noise, fuel costs, maintenance costs and airline safety in general.

The advances available to us from the B–2 program that Mr. Bofferding has mentioned, go a long way to providing solutions to these very serious problems.

The new super-light but incredibly strong composite materials will make a significant difference in both fuel economy and structural integrity. It must be noted that fuel economy is of gigantic importance to the airline industry. Savings of literally billions of dollars of fuel will accrue to our industry if our new airliners can take full advantage of advances offered by the B–2.

Noise pollution has also been solved by the B–2. And there is not one member of Congress who is unfamiliar with aircraft noise controversies nationwide and, of course, right here at National Airport.

By embedding the engines within the flying wing itself, the B–2's four powerful engines provide an extremely quiet propulsion system that is truly revolutionary. Commercial aviation needs to benefit from this breakthrough.

Mr. Chairman, as you well know, travel and tourism is a two trillion dollar a year industry—the world's largest business. Commercial aviation is the prime supplier for that industry. Frankly, the United States leadership in commercial aviation is at a crossroads. Either we move forward with the technology provided by programs like the B–2—or we risk surrendering this vital industry to the Europeans and Japanese who are eagerly waiting in the wings for us to fall.

To those who would argue that we can derive the full spin-off benefits of the B–2 without actually producing it, I have one comment: Rubbish! Every single military and commercial aircraft in use today has undergone numerous changes and improvements that came about only because those aircraft were actually produced and flown in the real world environment. For this experience there is no substitute.

Lastly, I cannot conclude my military career spent almost entirely in the Strategic Air Command without replying to those who say the United States no longer needs a futuristic strategic bomber because of our missile arsenal and its capabilities. I heard these same arguments in the 60s when I was in ROTC, throughout the 70s and 80s and now the early 90s. I can only say that time has not improved that argument at all and all of us who served on the Arabian peninsula during Desert Shield and Desert Storm are glad the B–52 program was not halted three decades ago.

In conclusion, Mr. Chairman, it is readily apparent that much more is at stake in the B–2 procurement than simply another weapon system. American technological superiority in commercial aviation is at risk as well. Since commercial aviation is an integral and vital art of the infrastructure of this nation, the stakes are very high indeed. Make no mistake, in this business technological superiority is the key to success.

Thank you, Mr. Chairman and members of the committee, I'll be happy to answer any questions you may have.

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SEATTLE PROFESSIONAL ENGINEERING EMPLOYEES ASSOCIATION,
*Seattle, WA, June 13, 1991.*

Hon. J. JAMES EXON,
*Chairman, Strategic Forces and Nuclear Deterrence, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR EXON: My name is Charles Bofferding, and I am the Executive Director of the Seattle Professional Engineering Employees Association (SPEEA), a union representing more than 28,000 professional and technical workers across America. On May 16, 1991, I testified in favor of the B–2 bomber before the Senate subcommittee on Defense Appropriations. Also testifying was Duane Woerth, First Vice President, of the Air Line Pilots Association, International.

We are part of a coalition of labor unions who strongly support the defense budget. Unlike other unions who represent production workers and whose major focus is on jobs over the short term, our support is not based on the traditional arguments of jobs. Rather, our support for the B–2 is based on the technological implications of this advanced aircraft.

We entered the public policy process late in the last session of Congress and were unable to reach public policy makers early enough in the process to make them aware of the technology arguments we believe should be included in the dialogue. Senator Inouye invited us to present our technology case before his subcommittee during the day set aside for non-administration witnesses seeking input into the public policy making process.

We understand that the Senate Armed Services authorization process does not allow outside witnesses to testify, but will accept relevant testimony submitted to be include as part of the record. We would like very much for our testimony to be so considered. Enclosed you will find a copy of my testimony from SPEEA (ATTACHMENT #1), and Captain Woerth will be transmitting to you a copy of his testimony. We believe that if the technology implications of the B–2 are presented to members of the committee, the program would receive a great deal more support.

On behalf of the members of our union, we want to thank you for your continued support of the B–2 program.

Sincerely,

CHARLES H. BOFFERDING,
*President, Seattle Professional Engineering Employees Association.*

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TESTIMONY BY CHARLES BOFFERDING, MAY 16, 1991

Mr. Chairman and Members of the Subcommittee on Defense Appropriations, I would like to thank the Subcommittee for providing me the opportunity to represent the views of our Union on the important subjects of America's commitment to technology, funding for technology and, in particular, the B–2 Stealth program.

My name is Charles Bofferding, and I am the Executive Director of the Seattle Professional Engineering Employees Association (SPEEA), a union representing over 27,000 professional and technical workers across America.

Last year in the closing days of the Congressional session we became aware of the controversy concerning the continued funding of the B–2 Bomber. We noticed that supporters of the B–2 based their arguments exclusively on the national security and treaty implications of the B–2. Opponents focused on the cost. All of this debate took place before the Middle East War. I suspect that today because of the demonstrated value of the tremendous technological superiority of American weapons and their ability to shorten a conflict and save lives, support for the B–2 should increase in this Congress.

However, the case for continued production of the B–2 program is strengthened considerably when one examines the larger technological issues. The implications of the B–2 were missing in previous Congressional debates. One of the most important justifications for the B–2 Bomber is its place in the historical development and implementation of technology in the American system and the enormous contribution that this program will make in terms of its commercial applications. The new techniques developed in the B–2 program, the miracle of the B–2's unique production process and contribution to the nation's technological base have never been given a public forum. (We appreciate the opportunity to shed some light on the real miracle of the B–2.)

For 10 years the B–2 was developed in secrecy as part of a complete defense package. The genius of American engineering was challenged as never before in responding to the requirements for stealth, range and payload on this Bomber, resulting in extraordinary design and manufacturing processes.

As an engineer who represents tens of thousands of employees with advanced degrees, as one familiar with the technology surrounding this aircraft, I would like to touch upon some of the elements of that technology and the implications of those developments of America's commercial aerospace industry. The development of the B–2 Bomber created over 900 new materials and processes. I will cite only a few.

First was the advance in composites. To meet the specifications required by the Air Force we had to develop materials that were lighter but stronger than traditional materials used in current military and commercial aircraft. Lighter weight provided fuel efficiencies needed for extended range. The composites not only provide strength, but avoid metal fatigue. Future planes made from composites will not fail as did the aluminum hull of the Hawaiian airline that disintegrated after years of use.

The Boeing Company is planning to employ composites in the tail assembly of its new 777 commercial aircraft currently under development. Many of the people who will build the 777 empennage acquired their skills on the B–2 program.

Second, new materials required new tools and manufacturing techniques, all of which had to be conceived and developed for the B–2.

High-speed machining of magnesium, aluminium and titanium parts, as well as the drilling of multi-material laminates, spawned the development of drilling equipment that automatically adjusts to changes in material hardness.

New techniques such as ion-gas "dusting" were developed for cleaning machined honeycombed parts, drastically reducing production time. Robotics were developed for drilling, inspection, fastening and coating of parts.

Third, like no other program in history, the integration of the thousands of components was accomplished through an elaborate network of computers that united in a common electronic database. This system allowed computer-aided design (CAD) and computer-aided manufacturing (CAM) to work together, by eliminating the language gap between them.

CAD/CAM permitted the B–2 assembly to be fabricated directly from an electronic database thereby eliminating master tooling altogether. The production time for tools was cut by more than 80%.

Engineers were able to unite wires, tubing and internal components in a "first fit" assembly. The normal "fit" problems due to engineering efforts were cut six times. Instead of the 40%–60% error rate for military aircraft, the new techniques produced a 97% "first fit."

Fourth, prior to the first flight of the B–2, there was widespread speculation that the aircraft would not fly. The tens of thousands of technical workers who performed the unprecedented, computer-simulated tests prevailed over the doubting Thomases and the academic detractors. They were confident because of the extensive preflight computer-aided testing that took place: 24,000 hours of wind tunnel testing; 40,000 hours of avionics evaluation; 12,000 hours of flight simulation; 6,000 hours of control test evaluation.

In all there were more than 800,000+ hours of tests on component sub-systems.

While all this record-breaking development was taking place, the political climate for the defense budget in general, and the B–2 in particular, was disintegrating. Mounting criticism endangered the program forcing the industry to expose the development process to the public eye. The B–2 aircraft made its maiden voyage on the evening news. The plane that was shown to the public was the first one ever built, and it flew the first time.

The manufacturing technology advances resulting from this program are monumental. Design and manufacturing of future aircraft, automobiles and ships will benefit from the technology developed from the B–2. The program is a showpiece of American competitiveness, know-how and inventiveness and a testimony to the historical process which have given us the jet engine and the commercial satellite industry.

I would like to introduce another important element that I believe has not been stated in a public forum. That is, development continues during the production process. The benefits of the design and development phase have been substantial, but there are still many lessons to learn, workforces to be trained and significant advances to be gained from the full-scale fabrication and deployment phases ahead of us.

America's commitment to technology cannot be limited to design and engineering program phases only. A highly skilled manufacturing base is essential to complete the full technological picture. What value is technology if we don't have a skilled workforce to produce real marketable hardware? The lessons to be learned in deployment are also significant. It is only through extended use that newly developed materials can be demonstrated and proven to be safe for commercial use. It will take a lot of education to convince America's policy makers that we need to maintain our commitment to technology. The people most affected by that commitment, the engineers, technical workers and skilled laborers, are going to have to help in this process.

Until now American aerospace workers have not been players in the public policy arena. The average American worker does not read the Congressional Record and, as a consequence, is unable to protect themselves from the effects of declining legislative support for technology in America. We fear that misguided attempts to reduce "defense" spending will in fact cut the seed money essential to the development and maturation of the technologies and skills critical to this country's long-term economic well being. As our technological horizons diminish so will the vast array of high-tech products, capabilities and markets which have been the bedrock of America's industrial might.

Understand, I am not here today to argue in favor of the B–2 Bomber because of the jobs that it provides for American workers. Our vision extends beyond jobs. My purpose is to present the technical as well as the manufacturing considerations and to state for the public record their relationship to the skilled production workers who are part of this nation's infrastructure and economy. If we do not produce the B–2 in sufficient quantity and continue the development phase throughout the production process, we will have abandoned a process which placed us at the forefront of global technology. Individuals will lose much more than their jobs (in a viable economy other jobs can be found); they stand to lose their engineering and technical careers. America will lose its ability to compete with other industrialized nations who resolutely commit themselves to long-term technological advancement; other nations who will accept the economic and social benefits for their workers and citizens that we will deny to ours.

Again, I would like to thank you for this opportunity to testify on these critical issues at this critical time.

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

Mr. DOLE. Mr. President, will the Senator from Indiana yield 5 minutes?

Mr. COATS. Mr. President, I am happy to yield to the minority leader as much time as he wishes to consume.

Mr. DOLE. I also want to thank the distinguished Senator from Alabama. I will just take a few moments.

The PRESIDING OFFICER. The distinguished Republican leader is recognized.

Mr. DOLE. Mr. President, first, I want to concur in the statement just made by the distinguished Senator from Nebraska. I share his view on this particular issue. This is a very important debate, probably more important today than it was a year ago when Saddam Hussein was marching his forces into Kuwait. Our swift victory was a tribute to President Reagan's vision and commitment to a strong defense brought about by bipartisan support. It was a tribute to those who had the courage to join with President Reagan in making that vision a reality. And, when we were challenged, just 1 short year ago, we had the strength to deal swiftly with the aggressor. This debate is about the outcome of the next challenge.

Some seem to be very anxious to forget the lessons of the last year. They are quick to point out that the world has changed—that things are so different now—that America no longer needs a nuclear tirade, that we will never need the B–2 bomber, that we will never require ballistic missile defenses.

Mr. President, I am amazed by those who can predict the future so accurately; not just for tomorrow, but now 10 years from now. It seems to me that we ask the American people to bet the security of the Nation on all these predictions. We would have to face up to the facts that the Soviet Union does continue to modernize its awesome strategic arsenal. That certainly is a matter of concern. Just as Saddam Hussein's invasion of Kuwait did not seem to matter to those who were predicting the future just 1 year ago today. We do not know what is going to happen tomorrow, or next week, or 6 months from now or a year from now. We must decide now how our military forces will be structured over the next several decades.

I think we have to make these obvious decisions based on tight budgets and a changing world situation, and these decisions will decide our security well into the next century. We will decide now how we will prepare for this uncertain future.

They seem to know exactly what will happen in the world. They seem to know just how things will evolve in the Soviet Union and elsewhere—not just tomorrow, but a year from now, and 10 years from now. They seem to know the course of world events and comfortably state that there will be no reversal—no change—no threat from the Soviets or anyone else. They would ask the American people to bet the security of the Nation on these predictions. The fact that the Soviet Union continues to modernize its awesome strategic arsenal doesn't seem to matter. Just as Saddam Hussein's invasion of Kuwait didn't seem to matter to those who were predicting the future just 1 year ago today.

But the fact is, we do not know what is going to happen tomorrow, or next week, 6 months from now, or a year from now. However, we must decide now how our military forces will be structured over the next several decades.

We must make these decisions in an environment of tight budgets and a changing world situation. These decisions will decide our security well into the next century. And we will decide now how we will prepare for this uncertain future.

We do not want to lose sight of the fact that we cannot instantly reverse these decisions. We cannot just say, "Oh, we made a mistake" and turn things around. It will be too late and we will live with the consequences.

In my view, terminating the B–2 program at this juncture is both premature and irresponsible. It is an irreversible decision. Continuing research may sound good and give people some cover. But, research alone is meaningless without producing something. Research alone does not deter. And you cannot push a button and have 20 or 30 more B–2's when you need them. If and when you need force, you go with what you have. And that is what this debate is all about.

So the issue in my mind boils down to how sure we are about the future, and to what extent we want to bet our security on what some people think will happen. Are we so sure about what the future will bring as to say with certainty that only 15 B–2's are all we will ever need? The President is not. The Secretary of Defense is not. And I am not. When the time comes—as history shows that it will—I want to make sure that we have all the firepower we need.

Four administrations have strongly supported the B–2 bomber. We have paid for the ability to ensure our strategic deterrent and security in a changing and unstable world. And we have paid for—and received—new technology of the highest order. Our current and future security needs demand that we do not waste this heavy investment, but that we continue to prove out and build the B–2 bomber.

Mr. President, I know there are people who have other opinions and feel strongly about other approaches and, certainly, I do not question their integrity or anything. But it seems to me, in this case, I will stick with President Bush and the others who believe we should proceed.

I commend my colleagues on the Armed Services Committee for taking a sound approach toward this program. The B–2 means a lot of money spent, but thanks to the efforts of the committee it will be money spent wisely. I urge the Senate to support their approach and not to make rash and premature decisions about the future.

Mr. President, I would like to end my remarks with an excerpt from an article written in 1953, in Aviation Week—at a time when the United States was considering the B–52:

> The feeling in some U.S. Air Force quarters is that the difference between the B–47 and the B–52 performance is not worth the cost of the latter program. Strategic Air Command also anticipates getting supersonic bombers soon enough to make the B–52 strictly a short interim measure.

After 30 years of the B–52, we know better.

I thank my colleagues and yield the floor.

The PRESIDING OFFICER. The distinguished Republican leader yields the floor.

Mr. SHELBY. Mr. President, I wonder if the Senator from Indiana would yield me 10 minutes.

Mr. COATS. Mr. President, I am happy to yield 10 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama [Mr. SHELBY] is recognized for 10 minutes.

Mr. SHELBY. Mr. President, I rise today to speak in opposition to the Leahy-Cohen amendment to cap the B–2 program at 15 bombers. The amended budget request for fiscal year 1992 contained $3.2 billion in procurement and $1.56 billion in research and development for the B–2 bomber. The Armed Services Committee fully funded the Department of Defense's request for fiscal year 1992.

This issue before us is not new to this body. When the Department of Defense authorization bill comes before the Senate it is a certainty that there will be debate on the B–2. It is a costly aircraft. However, the B–2 bomber's mission of both strategic and conventional deterrence is more necessary than ever.

As has been demonstrated by the F–117A aircraft during the Persian Gulf war, stealth is the key to future air operations. The F–117 was able to strike heavily defended targets with impunity. You cannot hit what you cannot see, and the Stealth figher time and again dropped its payload and was gone before the Iraqi's literally knew what had hit them. The B–2, with significantly greater payload and all-weather day/night capability could perform the F–117's mission with less aircraft and without the necessity of refueling. Let us face it, stealth works. Make no mistake about it.

Still, strategic nuclear deterrence remains the primary mission of the B–2 bomber. The maintenance of the manned bomber leg of the nuclear TRIAD is vital to this strategy. The B–2 will contibute to strategic nuclear deterrence by providing the operational capability to penetrate enemy airspace and deliver any of a variety of nuclear weapons to enemy targets with great accuracy. Unlike a land or submarine launched ballistic missile or a cruise missile, the B–2 can be called back once it has been deployed, and that is unique. It also has the flexibility to attack relocatable targets.

This stabilizing influence is best reflected by the START Treaty which reduces nuclear arsenals by one-third, and was just signed by President Bush and President Gorbachev in Moscow. This treaty favors bombers over all other delivery vehicles. All warheads on ICBM's and SLBM's will count toward the warhead limits under START. Each U.S. bomber carrying cruise missiles will be counted as 10 warheads. However, in the current START structure, manned penetrating bombers will only count as one warhead, regardless of how many gravity bombs or short-range nuclear missiles they carry. The termination of B–2 production at 15 aircraft would significantly weaken the

U.S. deterrent position. Neither the B–1 nor the B–52 can be depended on to serve in the role of the penetrating bomber now.

The Desert Storm experience also foreshadows the development of nuclear and chemical weapons by Third World nations. Nuclear deterrence is evolving from a bipolar phenomenon to a more complicated multipolar one. This problem will only get more complex over time. The more tools we have to provide deterrence, I believe the better off we will be in America. I believe that 75 B–2 bombers provide the flexibility necessary to meet these challenges that await us.

Mr. President, the future national security of out country is dependent upon the nuclear TRIAD. The B–2 bomber is vital to this policy.

I urge my colleagues to reject the amendment offered by the Senators from Maine and Vermont.

I yield back my time.

The PRESIDING OFFICER. Fifty-nine minutes and 23 seconds remain for the managers; 57 minutes and 36 seconds remain for the advocates of the amendment.

The Senator from Indiana.

Mr. COATS. Mr. President, I ask unanimous consent to speak in morning business for 2 minutes.

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

The Senator from Indiana is recognized.

Mr. COATS. I thank the Chair.

(The remarks of Mr. COATS pertaining to the submission of Senate Resolution 116, are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

Mr. COATS. Mr. President, I yield 7 minutes to the Senator from South Carolina [Mr. THURMOND].

The PRESIDING OFFICER (Mr. LAUTENBERG). The Senator from South Carolina.

Mr. THURMOND. I rise to join those who speak in opposition to the amendment which would terminate the B–2 bomber program.

Mr. President, our Nation is currently reformulating its military strategy. We are doing this not because of our past failures, but because of our recent successes. Communism, along with its expansionist threat, has all but disappeared thanks to this Nation's nuclear deterrence and strong military capabilities. The emerging threat, sometimes unexpected as the conflict in the Persian Gulf, stems from the rise in power of Third World countries. To meet this threat we must adjust our thinking and our military force structure.

The B–2 bomber, whose genesis stemmed from the ever-increasing sophistication of the Soviet air defense systems, will play a major role in this new strategy. The Soviet Union is not the only nation that has modernized its air defense systems—virtually every nation has. Iraq's sophisticated air defense system initially precluded us from using our B–52's. We succeeded in rendering this system useless primarily because of our stealth technology. Only after the F–117 stealth fighters knocked out strategic air defense headquarters and communication sites were our conventional fighters and B–52's able to operate in the theater with relative immunity.

Mr. President, as everyone will acknowledge, Operation Desert Storm was a glorious success. A key factor in our success was the fact that our forces had bases available in Saudi Arabia and Turkey. In future conflicts, we may not have the luxury of such bases. We may have to build bases to receive our forces, or in a worst case scenario assault across the beaches. In either case, we will lose precious response time.

Our only option to quickly react to a crisis in these circumstances is the Nation's long-range bombers, which devastated the Iraqi forces after the destruction of the Iraqi air defense systems. Currently, our only long range conventional bomber is the B–52, which first flew in the early fifties and the last of which came off the assembly line in the mid-sixties. The B–52, despite its upgrades and sophisticated electronic jammers, cannot survive the future air defense threat—it is very doubtful that any conventional aircraft could.

Mr. President, the only aircraft that will provide this nation with the capability to deliver conventional bombs, on short notice, over a long distance, with relative immunity is the B–2 bomber. Its proven stealth capability will allow it to penetrate any known air defense systems and deliver a bomb load that exceeds that of any bomber in the free world.

The critics say that the B–2 was not designed for a conventional role and that the Air Force is changing its mission because it no longer has a nuclear role. I say that the critics are wrong on both counts.

Chairman ASPIN of the House Armed Services Committee, which advocated stopping the production of the B–2, stated in a speech to members of the Electronic Industries Association:

> Buying the B–2 for conventional missions makes sense. Ten B–2's could have delivered twice the payload of the 42 F–117's we used in the gulf war. That is a total of 160 precision guided 2,000 pound bombs as opposed to the 84 weapons carried by the 42 F–117's. And that is a pretty big silver bullet.

In terms of the nuclear mission I would like to quote from a RAND Corp. briefing on the B–2:

> Given that the lifetime of bombers is about 30 years, it would be foolhardy to assume that deterrence of Soviet nuclear attack need no longer be motivation in our bomber force planning. The Soviet Union remains capable of devastating us with a nuclear attack. The 30-year political outlook for the U.S.S.R. is, to say the least, uncertain.

Mr. President, terminating the B–2 program would deny this Nation the ability to modernize its aging nuclear and conventional bomber fleet. We would enter the next century with a major flaw in our defense posture—the inability to quickly influence a crisis in any part of the globe. In my judgement, neither this Congress nor the American people should condone such a weakness in our Nation's military posture. I urge my colleagues to vote against this amendment and provide continued funding for the B–2 bomber, to protect this great Nation we all love.

I yield the floor, Mr. President.

Mr. COHEN. Mr. President, may I inquire of the Chair how much time is remaining for the proponents of the amendment?

The PRESIDING OFFICER. The proponents have 57 minutes, 30 seconds remaining.

Mr. COHEN. Mr. President, I yield to myself such time as I might consume.

Mr. President, earlier I talked about the reference in "The Commanders" about the ability or the adeptness of the Air Force in throwing up smoke screens. I would like to turn to the charts that were originally referred to by my colleague from Nebraska. It is something I assume has been put together with the aid of the Air Force, and it is really quite a remarkable demonstration.

In order to sell the Senate and the House as to the value of the Stealth bomber, the B–2 bomber, they draw a chart showing if you had just two B–2's, you do not need any of the rest of these other forces. You can do away with all of these other aircraft: bomb-droppers; air escort, suppression of enemy air defense, tankers. They are surplus. Two B–2's can carry out the same mission without all of this.

Well, that is interesting. Because now that that arrangement has been advanced, I hope the Air Force will be consistent and will bring that argument back to the committee year after year because I am going to be one member sitting there asking them exactly which of these systems are they now prepared to terminate?

In the committee's report, we asked a question: "If the full force of the B–2's is acquired, how many tactical attack aircraft are needed?"

It will be interesting to see what the Air Force is going to supply for an answer and whether they recommend the termination of those programs.

"If the full force of the B–2 is acquired, how many fighter and support aircraft are needed?"

It will be interesting to find out next year what the Department of Defense has to say about how many of these fighters and support aircraft are going to be necessary.

If the full force of B–2s is acquired, how many tanker aircraft are needed?

If the full force of B–2s with worldwide range and rapid arrival, is acquired, how many carrier air wings and carrier battle groups will be needed?

If B–2s can assume part of the early attack mission, how many attack aircraft does the Navy need to replace? Would a different mix of non-stealthy A–6 and F/A–18 aircraft be acceptable?

If B–2s can substitute for large packages of non-stealthy aircraft, how many re-engined tankers will we eventually need?

If B–2s can provide prompt, massed firepower, should we be emphasizing highly mobile but less heavily armored ground forces for projection missions?

We are going to ask each one of these questions. We have asked them. We want an answer to them. Whatever the outcome of this particular amendment, and one can only speculate at this time that those in opposition to the amendment seem to have the numbers on their side for the time being at least, but whatever the outcome I want to come back and ask the Air Force and the Department of Defense next year when they come in, how many of all of these systems are they going to propose eliminating and whether or not we ought to have an amendment, if they do not propose eliminating them, whether we ought to cancel them?

Because they cannot come in one year and say we do not need these things, they are irrelevant now that we have the B–2, and still continue with all of the new ATF's, the ATA's, all the new Stealth aircraft, the F–18 replacement, more carrier battle groups with air components. All of that ought to be eliminated if the B–2 will do what the Air Force says it will do.

So let us hold the Defense Department to their word. But do not bring a chart out here, as they are accustomed to doing, a nice fancy chart, and say just look at that: give us two B–2 aircraft and all of these will be totally unnecessary. We will see next year how many of these are totally unnecessary. I think next year you will see we will have more requests for more B–2's and all of those systems will be there with their modernized replacements.

Mr. President, it is said that Stealth works. I want to go back just a moment because it has been said by Secretary Rice: "B–2 testing proves the B–2 works." That is a direct quote.

We ought to recall similar statements that were made a decade ago when the Air Force was promoting the B–1. On March 8, 1982, the Air Force Deputy Chief of Staff, Lt. Gen. Kelly Burke, testified on the B–1 bomber. He described enhancements being made to the B–1A to make it into the B–1B, including improvements to electronic countermeasures, and I am quoting from General Burke's statement at that time:

We are going to improve the countermeasures. This involves modular upgrades to what we have now, which is a very successful defensive system in the B–1A. We have proved that, it has worked beautifully.

Mr. President, every Member of this body knows that the electronic countermeasures of the B–1B are a disaster. They are a disaster. They do not work. After this great categorical assertion that it works beautifully, we know a decade later it does not work at all.

So when the Air Force wanted to persuade the Congress to buy the B–1 it testified, "We proved that it worked beautifully." Now when the Air Force wants to persuade the Congress to buy the B–2 it testifies "testing proves it works." History has repeated itself. And in the first case it did not work and does not work, and we ought to take that into account when considering the second.

Mr. President, I want to alert my colleagues to the fact that, as of 10 minutes ago, we placed on each Member's desk a letter addressed to Senator NUNN from the Secretary of the Air Force. Everyone should be aware of this. I see the chairman of the Armed Services Committee is now on the floor and I will let him explain it in more detail. But we on this day, this fateful day of the debate of the B–2 bomber, in the final hour and whatever minutes remain on this debate, we are advised that there is a problem. We have a problem with the B–1B.

Guess what folks? Not only do the electronic countermeasures not work as we promised you back in 1981, we now have found that cracks have developed and we found these back in January. We tried to fix them. We didn't tell you about it then. We did not tell you about it at all. At that time we tried to fix it and then we found that the fixes do not work.

So, at 5:15, in the last hour and a half of debate on the B–2 bomber, the Air Force comes in advising the chairman of the Armed Services Committee: We have a big problem. We have a serious problem. We do not know how serious it is but we have a problem.

I would leave it up to each individual Member to decide whether this now favors going forward with the B–2 in the numbers requested by the Air Force, or whether it ought to serve as a reminder to all of us what is involved when it comes to the production of this kind of system and these kind of assertions we have been receiving in the past. Each Member will have to decide on his or her own as to whether or not it should work in favor of the B–2 or in opposition.

I would just say it is "curiouser and curiouser," to take a phrase out of Alice in Wonderland, that we would have this problem identified in January but not be alerted to it until 5:15 on the day, the very day in which we are going to be voting on the B–2 bomber.

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

The PRESIDING OFFICER. The Senator from Georgia, Mr. NUNN.

Mr. NUNN. Mr. President, the Senator from Maine is correct. There is a problem with the B–1B aircraft, and we have learned about it this week.

I was the first informed in a very hasty conversation by my staff on Monday afternoon. Senator EXON and I talked about it yesterday. I called Secretary Cheney today and Secretary Cheney called Secretary of the Air Force Rice. I called Secretary of the Air Force Rice, and he sent up the following letter.

I asked Senator LEAHY and Senator COHEN to join Senator WARNER, Senator EXON, and myself and staff a few minutes ago because I felt both sides of this amendment need to have this amendment. I do not know how it will cut in people's minds. In my view it makes the B–2 much more important, because the B–1 is clearly a troubled aircraft. However, I can certainly understand the argument made by the Senator from Maine that the Air Force has had problem after problem with the B–1 and that therefore people should be skeptical about the claims on the B–2.

I am not going to try to refute that one. I do believe that the B–2 program has had much more extensive testing. It has been done over a much greater period of time. The testing has been in great detail. Our committee has put fences around the production. We have made sure the production model did not go forward until certain tests were met. We are doing that again this year.

We have just had a very intensive analysis from the Rand Corp. that concluded, in effect, that the crucial test will be early next year. From that point on, the confidence level will go up in most of the key categories, and that if we continue to hold back on production, the cost of any foreseeable corrections, based on things that tests may reveal, will be less than the costs you will incur, the taxpayers will incur, by not going forward with production of the B–2.

In other words the longer you hold up on production the more each aircraft costs. And that the risks, the risks involved of having to correct problems is much smaller than the risk involved in terms of money of going forward with production.

So I think every Member has to judge for himself or herself. But I did believe every Member ought to have this on his or her desk and be able to put it in whatever calculation they would make.

I personally think it cuts both ways. I think you can make a strong case, and I will make that case, for the B–2. I believe if the B–1 is going to continue to have the problems it has, the straight case for B–2 is even more important than it was.

But I am not going to argue that people should vote for the B–2 because of this letter. I do think they ought to have the letter, and I think the letter ought to be part of the record so Sen-

ators will at least be informed and not wake up one day next week and read this in the paper.

As far as why the Air Force did not get it to us sooner, I am told by our staff who are experts in the way that aircraft work that cracks in airplanes are not in any way unusual; that almost every airplane at sometime or the other experiences cracks. The difficulty here, and the thing that makes this problem more serious, is that the fix for those cracks that was tried in the early part of this year has, apparently in some planes, not been successful. So that is a different dimension of the problem.

I cannot evaluate how serious it is. We will have to hear further at a later point. In my opinion the Air Force themselves do not know how serious it is at this juncture. But, in any event, I do not fault the Air Force based on the information I have now. I may change my mind on this one. But now I do not fault them for notifying us—I believe they notified the staff late last week and probably notified all the committees. Because until that time they did not know that their fix, on what is rather routine in terms of correcting cracks—they did not know their fix did not work. The time they knew this was a serious problem and they notified us of that, as I understand it now, is when the fix of the cracks itself did not appear to do the job.

That is all I know about it but each of our colleagues will have this on their desks.

I ask unanimous consent the August 1, 1991, letter be printed in the RECORD.

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

SECRETARY OF THE AIR FORCE,
*Washington, DC, August 1, 1991.*

Hon. SAM NUNN,
*U.S. Senate,*
*Washington, DC.*

DEAR MR. CHAIRMAN: In January 1991, the Air Logistics Center at Oklahoma City detected a small two inch crack on a B–1B aircraft undergoing a standard inspection. The crack was in the longeron—a structural member that runs alongside the spine of the aircraft. The Air Force issued instructions to inspect the entire B–1B fleet. Cracks were found in 37 aircraft, which were then repaired using a reinforcing aluminum doubler and a drilled hole to stop crack migration.

Three weeks ago, a reinspection of a previously repaired B–1B revealed that the crack had migrated past the stop drill hole. The Air Force issued immediate instructions to inspect aircraft that had been previously repaired or had flown more than 100 hours since the previous fleetwide inspection. Of the seventeen, four have returned to flight and thirteen are being worked.

A new reinforcement kit using boron epoxy has been developed and was delivered last Friday. It is currently being installed on the first aircraft for evaluation. Twenty additional kits are being prepared for shipment. These kits will be installed and evaluated on a regular basis to ascertain if they will serve as a permanent fix. I will keep you informed on this issue.

Sincerely,

DONALD B. RICE.

The PRESIDING OFFICER. Who yields time?

Mr. EXON. We yield time from the manager's side of the bill.

Mr. President, I thank the manager of the Armed Services Committee for his remarks, with which I agree completely. The decision was made that this was a matter that all Members of the Senate should be advised of. I agree with the chairman of the committee that, from what we know now, the Air Force should not be faulted on this. It is true that they found some hairline cracks in parts of the B–1B, that they have experienced in other aircraft. As the Senator from Georgia has just said, when they made the fix, of what they thought was something minor, the cracks continued to develop beyond the plate that we used to try to correct the problem.

The first I knew of this, as chairman of the Strategic Nuclear Deterrence Subcommittee, was on Saturday last when the commander of the Strategic Air Command in Omaha called me at my home in Lincoln. He was quite discouraged but thought I should know so I would not be surprised at this new series of ongoing problems with the B–1B; that it should be brought to our attention because it was now a determination of the Air Force that this was something more than just a routine maintenance.

In fact, I inquired to the SAC commander whether or not this was limited to one particular production run during production or whether this problem probably was inherent in the whole fleet. He confirmed to me it was his opinion that, indeed, this was a matter of the whole fleet that was likely to be corrected. I asked how long this was going to take and what the costs would be and he advised me that the Department of Defense was working on that at the present time.

In any event, in lay terms, as I understand it, the cracks have to do with the structure, if you will, that holds the wing to the fuselage, or makes them one and the same. Of course, this particular stress crack is one that is of considerable concern to the Air Force. They are confident, at least, that it can be fixed. But as the Strategic Air command general told me, he was sorry to tell me of this latest problem with the B–1B.

I reserve the remainder of our time and yield the floor.

Mr. COHEN. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. COHEN. Mr. President, I sense something very curious about the release of this particular letter from the Air Force, as well as about the manner in which this notification has been made to the members of the Armed Services Committee and now to the Members of this body.

It is also curious to me that an article appeared on July 24, in the New York Times, talking about cracks found developing in the F–16's. I do not know when those cracks first appeared, but it did not take long to end up in the papers since only a few F–16's were inspected before the Air Force made an announcement so that everyone knows about cracks in the F–16.

With the B–1, in contrast, the Air Force apparently knew way back in January there were cracks developing. They decided they were not going to tell anyone about it. Instead, they wait until the last day, just before the vote on the B–2 and say, by the way folks, we do not have a plane that works. We know its countermeasures do not work. Now we do not think it is going to be able to fly safely. We just thought you ought to know about that before you vote against the B–2 bomber.

So I find it a matter of great curiosity in terms of the timing of this. As I indicated before, Senators will have to make up their own minds in terms of what this bodes for the propram.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? If no one yields time, the time used will be distributed accordingly.

Mr. COHEN. Mr. President, parliamentary inquiry?

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. The Senator from Tennessee has just arrived in the Chamber and is about to speak. May I inquire whether the time allotted to the Senator from Tennessee will be allocated to the 45 minutes that was requested for him?

The PRESIDING OFFICER. Will the Senator restate the inquiry, please?

Mr. COHEN. Will the Senator from Tennessee be recognized to consume the time allocated to him under a unanimous-consent request, rather than from the sponsors of the amendment?

The PRESIDING OFFICER. That would be in accordance with the request.

Mr. COHEN. I thank the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Mr. President, the National Defense Authorization Act that we are considering today is, in my view, a bittersweet mix—a mix of hopeful progress and missed opportunities, of new world vision haunted by ghosts from the cold war past.

I must confess that my expectations for this legislation have been very high. I suppose my disappointment stems in great measure not from what the bill does, but rather from what it could have done.

Last year when the world changed—literally overnight—the Senate Armed Services Committee moved with dispatch to review the military threat to our Nation and to set priorities for a new defensive strategy. The distinguished chairman of the Armed Services Committee, I think, deserves great credit for moving this committee into this shifting current; for sensing the future changes; and for charting a course that would adapt the policy of this country to these changes.

The result was very promising. The committee identified five broad themes to guide its future program, five broad themes for future program recommendations and, in my judgment, those are the stated goals by which we must evaluate our current effort to pursue an ordered military builddown in this most remarkable cold war period.

First, last year, the committee pledged to maintain a nuclear deterrent at lower levels and with greater stability.

Second, the committee stated it would emphasize a reinforcement strategy with increased mobility and improved rapid deployment capacity.

The third point was to increase the use of reserve forces.

Fourth, to apply a principle of flexible readiness.

And fifth, to think smarter, not richer, in making procurement and force-structured decisions.

Those are the bellwether themes laid out by the committee last year, themes that continue to be valid and continue to be, I submit, very valuable today.

Again, Mr. President, I commend the committee and especially its distinguished chairman, Senator NUNN, for all of those goals. I also applaud the chairman's commitment to a reinforcement strategy.

The proposal on the floor today would authorize reducing the troops of the United States in Europe by 60,000 and would vastly improve force mobility. It includes funds to modernize our maritime prepositioning ships and to design new sealift ships, both fundamental to a quick response capability, and that was clearly evidenced in the war in the Persian Gulf.

In short, Mr. President, the Armed Services Committee wrote a very good script last year, but it appears to this Senator that the legislation before us now simply has not followed that script in some very critical and crucial areas.

Of course, the most troubling area is the case of nuclear weapons. The stated priority of the committee is—in my judgment, the correct one—to maintain nuclear deterrence at lower levels and with greater stability. But seldom in this bill do I find that priority reflected. Quite the reverse. This legislation would fund a vast array of nuclear weapons systems, in several cases, beyond the levels requested by the administration.

When I consider the funding requests that are before us in the strategic field, funding for the B–2 bomber, the Trident 2 ballistic missile, the MX, so-called Peacekeeper missile, the new star wars initiative, one can only conclude, and the conclusion is irresistible, that this is a cold war shopping list.

It seems a substantial irony that we are here today parceling out tens of billions of dollars for weapons to defend ourselves against a superpower engagement when our only potential superpower adversary, is begging us at this very moment to help them stave off financial ruin.

I ask my colleagues the same question that I asked late last year: What threat are we arming ourselves for? Where is the threat of such enormous magnitude that we must continue down this road of pouring tens of billions of dollars into a strategic nuclear deterrent?

Why, this very day in Moscow, Soviet leaders are begging the Western World for economic aid, and there is little doubt that the Western democracies will ultimately condition that aid on a further retrenchment of the Soviet military.

The Soviets themselves are beginning to understand, that they simply cannot waste their economic resources, which are very scarce, on military hardware while their citizens starve and their soldiers go homeless.

I was in the Soviet Union last year and had discussions with Marshal Akhromeyev for some time, discussions with members of the Supreme Soviet and along with colleagues spent over 2 hours with Mr. Gorbachev himself.

I came away from that whole visit with the feeling that it is all over for them, from a military standpoint; I found great resentment on the part of the citizenry and the elected leadership toward the military—toward what they thought was a privileged lifestyle and what they viewed as a waste of the country's economic resources.

I have to ask once again: Why are we spending billions of our own scarce resources to defend against a threat that is not verifiable? It appears to me we are simply shoveling money into the furnace of a military machine that cannot slow itself down. I reflect back years and years ago to the departing message of General, then President, Dwight Eisenhower cautioned this country of the problem with a continuing military buildup.

This bill in my judgment, Mr. President, does not achieve the goal of thinking smarter, not richer. Make no mistake about it, the most prominent feature of the authorization bill before us today is that it seeks to increase across the board and on a massive scale procurement spending for big ticket weapons systems.

Of course, the B–2 is just one example. The administration wants nearly $5 billion for the B–2 in fiscal year 1992, and this committee fully complied with the administration's request. But let us understand that this level of funding represents a 100-percent increase in the B–2 production rate and sets us on an entirely new production schedule, one that actually leapfrogs ahead of the testing schedule.

According to the latest B–2 program summary, the Air Force plans to have authorization to build 71 percent of the bombers, at a cost of $33.8 billion, before the planned completion of the test and evaluation program in 1996.

This approach to procuring the B–2 bomber directly refutes the fly-before-you-buy standard that the Armed Services Committee pledged its allegiance to last year.

If nothing else, the end of the cold war means that we have time to test systems thoroughly before committing large resources to full-scale production.

The same irony governs the increased production schedule for the Trident 2D–5 ballistic missile. This MIRV'd, submarine-launched ballistic missile, with hard target kill capability, is a state-of-the-art strategic nuclear weapon. The administration asked for 28 D–5's. The committee has recommended buying 49 D–5's at a cost of $1.5 billion. Yet, the Department of Energy lacks the facilities and the resources to produce warheads for the missiles. The committee's own report language states that tritium gas has not been produced since 1988 and plutonium for new weapons since 1989.

So the obvious question is, if we cannot build the warheads, why buy the new missiles? Clearly, this is another case of production outpacing planning.

But still the ultimate buy before you fly program has to be the strategic defense initiative.

At a time, as I said earlier, when most committee chairmen are forced to tell their members that no new initiatives will be funded in education, in health, in crime prevention, the Armed Services Committee plans not only to fund a new initiative but to fund it at nearly $5 billion next year, and I am advised by experts on the Senate Budget Committee that this will add $10 to $20 billion to our expenses in the coming years, making the SDI deployment one of the costliest new initiatives in the Federal Government.

And perhaps more than any other recommendation, SDI directly contradicts the theme of deterrence at lower levels with greater stability. It raises the stakes, I think, precipitously. It will ultimately, I believe, if followed through to its logical conclusion, lead to violation of the ABM Treaty. It is certain to provoke a negative Soviet response and could well deter additional cuts in strategic nuclear weapons.

We made some progress with START, but let us realize that this START Treaty we just signed will put us back to having the number of nuclear weapons we had when the START negotiations started some 10 years ago.

These are just 3 of the more than 100 major acquisition programs in various stages of development in the authorization proposal before us today. Funding for those proposals total more than $85 billion next year, and the General Accounting Office places total acquisition costs at more than $1 trillion over the lifetime of the systems, with well over half that amount yet to be spent.

Now, just a year ago the Committee on Armed Services outlined a program of flexible readiness, touted with the potential to save $20 to $30 billion in 4 years. Yet in the authorization bill 1 year later, I cannot find a single word about this concept of flexible readiness, nor can I detect its active presence in any of the accounts that are funded in this bill.

Instead, the bill contains the seeds of a system that could prove to be the largest procurement program in the history of this Government—the F–22 fighter—with a total cost as high as $90 billion.

With little discussion about the need for a new aircraft, much less this aircraft, the committee would authorize the Air Force to pursue full-scale development and spend $1.6 billion in research and development funding next year. And in future years, well, the sky is the limit.

That is precisely what all these big ticket items have in common—the propensity to grow ever larger with each succeeding year.

As a result, they simply fly in the face of the fiscal reality we have tried to craft ourselves here at great political cost on the floor of this Senate.

Mr. President, we must accept the fact that any program growing at many times the rate of inflation is on a collision course with our budget agreement, on a collision course with the unyielding spending caps that are going to descend in 1994 and 1995.

As my colleagues know, the restraint that governs our actions this year will have to be replaced by increased austerity. The handcuffs are not going to come off fiscally in the coming years. No, they are going to get tighter. They are going to get tighter on all of us.

The Congressional Budget Office tells us that to meet the cap in the final years of this agreement, we will need to cut at least $14 billion in discretionary spending in fiscal year 1994 and $22 billion in 1995. Now, that takes into account the planned decline in military spending on which we are already counting for both years and allowing the rest of the discretionary budget to grow only at the rate of inflation after 1993.

Let us not make any mistake about it, so that in future years we can argue that we did not know, what the Congressional Budget Office is telling us is that if we adhere to the budget agreement we enacted into law last year, we are going to have to cut at least $14 billion in discretionary spending in 1994 and $22 billion in 1995. And that takes into account the decline in military spending that we planned on at the time the budget agreement went into effect for both years, and it only allows the rest of the discretionary budget to grow at the rate of inflation after 1993. Clearly something is going to have to give.

In my view, there is only one acceptable way to meet the cap, and to comply with our obligation under the 1990 summit agreement,—and that is to begin now to make choices between big ticket items. If we wait until the pressure builds in 1994, it is going to be too late them to trim the procurement bill, too late to get any savings from weapons systems. The Pentagon will have little choice but to cut military personnel in a drastic way—or else assist in blowing the caps, and ending restraint.

I do not think anyone wants to destroy our fiscal discipline. But the Congressional Budget Office estimates that if we delay these tough choices in the military areas, as I have told my colleagues before, as many as 425,000 military personnel are going to have to be cut in 1994 and 1995, and that is in addition to the reduction we are already planning of 233,000.

I do not think anyone wants that to happen. I do not know of any Senators who do. I do not know of any military professionals who do. Certainly the Pentagon planners do not want it to happen, and probably the American people do not, either.

It is a scenario, that is entirely preventable. The cost of doing so is simply to make the wise choices today between these big ticket weapons systems.

Our present course would have us sink, according to experts on the Budget Committee, $20 billion into star wars over the next 3 years; $16 billion into the B–2 bomber; $10 billion into the Aegis class destroyer; $7.1 billion into the F–22 fighter; $12.2 billion into the C–17 transport. We simply cannot afford it. The caps will not allow it.

The fact is, our ability to conceive and produce sophisticated weapons has simply outpaced our ability to pay for them. It is just as simple as that.

Now, I am not talking about cutting defense and using the money for domestic priorities. I wish we could. But the truth is we cannot even afford to do that. We are going to have to cut domestic programs also.

And far from singling out defense for harsh treatment, we simply must have defense pay its fair share of deficit reduction for the sake of restoring the fundamental strength to our economy.

We can talk all we want to about threats to our national security, and some, unreconstructed cold war thinkers will still see the Soviet Union as a threat. Some of them, I think, still dream about Lenin coming back at night as they sleep. They still dream of Joe Stalin's days in the Kremlin.

Others see a threat coming from Third World countries: North Korea, Pakistan, Cuba. One of my colleagues argued that a threat can come from Africa. I do not know. Maybe Angola is a threat to the United States. I cannot see that military threat, but I know that this corrosive budget deficit that you see eating away our strength and our substance every day, is a dagger aimed at the economic heart of this country.

You see it in roads that are inadequate, bridges that are crumbling, an educational system that is inadequate, our inability to deal with the problems of health care and to fund a health-care system, our economy becoming uncompetitive—a whole host of things. All of these can be traced fundamentally to the inability of our Government and our people to respond to our needs because of the deficit. That is the fundamental threat that faces our people here in the year 1991.

To my mind, our obligations under the terms under the budget agreement are very straightforward. We told the American people we would get our fiscal house in order. We also told the world—our statesmen went across the oceans talking about our budget summit agreement, and how we were going to exercise some fiscal control at long last. We told ourselves that here in this body. We went home and told our constituents that. I am not sure they believed us, but we told them.

Mr. President, I intend to fight for every penny of the $480 billion in deficit reduction that we promised the American people. It means hard choices in this military hardware; it means some hard choices in domestic programs. If it means some hard choices, then, Mr. President, I am prepared to make them. I urge my colleagues to make them while there is still time.

Mr. President, I yield the floor and reserve the remainder of my time.

Mr. NUNN. Mr. President, it is my hope that we can bring this amendment to a conclusion sometime in the next 30 to 45 minutes. I do not know whether the authors have many more people coming to speak, but I would certainly hope we can get whoever wants to speak on the amendment to come over and see if we cannot yield back some time. Otherwise, it will be a very late night, and a very late day and night tomorrow night.

So this is the timeframe where we can save some time if people will come on over and speak. And we can yield back some of the time, come to a con-

clusion on this amendment, and then go on to other matters.

Mr. President, if there are other Senators who come here and want to address this subject, I will be glad to yield. In the meantime I will make a few remarks.

We debated this issue over and over again. I rise in opposition to this amendment. In each of the past several years, the Senate has faced amendments that would have terminated the B–2 Program either totally, or leaving some token number of B–2's.

Despite these amendments, it is my judgment that the case for the B–2 has become stronger with each passing year. This year, I believe the case for the B–2 is very strong, and I would like to outline my reasons, briefly.

Mr. President, the arguments against the B–2 have three main threads. First, the B–2 allegedly will not work as advertised; second, even if it worked, the B–2 allegedly has no real mission; third, the critics charge that even if it worked and it had a mission, the B–2 is too expensive.

Let me explain briefly why I believe each of these arguments have already been proven wrong. Let us begin with the argument "it will not work as advertised." There have always been three critical make-or-break performance tests facing the B–2. Would it fly right; would it be stealthy; and would the avionics work as planned?

Mr. President, 90 percent of the envelope has been tested in terms of airworthiness. That was a point that the Senator from Ohio [Mr. GLENN] brought up, and he was greatly concerned about, legitimately concerned about, for several years. Ninety percent of that testing, 90 percent of the envelope, has been done, and the B–2 flies better than anyone anticipated.

The initial radar testing is sufficient to show that the B–2 is very stealthy. These test results were reviewed not just by the Air Force, but also by the Director of Operational Tests and Evaluation, who reports directly to the Congress on matters like this, and by the low observables panel of the Defense Science Board. I would say almost anyone would agree that the Defense Science Board is a pretty objective group—also, by the General Accounting Office.

And to those who say that Stealth is not important, all they have to do is read the transcipt from our hearings with the F–117 pilots who flew in Desert Storm, and time and time again were successful without coming out with so much as a scratch.

Mr. President, the third test relates to avionics. We all know how trouble-plagued the offensive and defensive avionics have been on the B–1 Program. Some people acted surprised about this. Frankly, I was not surprised. I opposed the B–1.

One of the main reasons I did so is because Bill Perry, who is one of the finest minds we have had in the DOD in terms of reserach, development, and new technology, came over and testified before our committee, before the B–1 was ever built, and said that the avionics were always going to be a problem. Even if technology was not a problem, we were always going to have a problem with the Soviets being able to counter the B–1 because it had so much avionics and relied so much on the avionics to be able to penetrate. They could counter it, and then the avionics would have to be changed.

So the predictions on avionics were pretty bleak to begin with by those in the know, and many of us put a great deal of credibility on that testimony in opposing the B–1, but of course unsuccessfully.

The test aircraft number 3: The first B–2 with the full production avionics has just begun its test flights. So the test flights have not been completed on those. They have just started. The B–2 Flight Test Program allocates 630 flight hours to testing the B–2 avionics systems. What most people do not know is that for the last 4 years the B–2 avionics have been flying in an avionics test bed aircraft, a specially modified KC–135 aircraft. In other words, the avionics have been tested separate from the aircraft.

This flying test bed has already flown more than 300 separate flights and has accumulated over 1,600 flight hours with the B–2 radar and the navigation avionics. This means that flying test bed has already put in nearly three times the flight hours testing B–2 avionics, and testing B–2 avionics during the actual flight test program on the B–2 itself.

Virtually every B–2 radar mode, including terrain following, has been demonstrated on the flying test bed.

Mr. President, I wanted to underscore that this is a far different case from the B–1.

All 100 B–1's were delivered or on order before the B–1B's offensive and defensive avionics systems were ever turned on. We have paid a big price for that. Because it lacks stealth, the B–1 depends, for its survivability, on the integration of its complex defensive and offensive avionics to penetrate Soviet air space. The B–2 relies on stealth for penetration. Its avionics are primarily used for navigation and flight controls.

I am not saying avonics are not important. They are important on any aircraft, but for the stealthy part of the aircraft, the B–1 relies on avionics, and the B–2 does not. That is a fundamental difference, and it puts much more pressure on the B–1 avionics than on the B–2, although both are important. The Air Force is confident that the avionics approach to the B–2 has avoided what I consider to be very, very serious errors of the B–1 Program, and very, very costly errors.

Mr. President, another question that is raised—and it is a good question—is: Is it time to increase the production rates of the B–2? This brings us to the issue of whether the B–2 is a mature enough program to begin to increase the production from the current very low rate of two per year to a moderate rate of four, as the committee bill proposes for fiscal 1992. A recent study by the Rand Corp. examined the issue of when the B–2 program should start to increase the production rate. This study was done to assess the risks that some costly-to-fix problem would be identified during the continuing test program against the certainty of increased program costs that results from holding production to very low rates.

Mr. President, the purpose, once you have a go or no-go on a plane, or any other weapon system, of doing more testing is to save money, so that you do not have as many problems to correct. But if you slow down the production rate on the systems so slow in order to complete every single test, then you end up spending more money, because you slowed the production rate down, than you would have spent to correct the problem. There is a cross line there somewhere, and the crucial judgment is: When did you cross that line? When do you have enough tests that give you confidence to go forward with a higher production rate, so you save money on production, rather than basically costing a lot more to produce aircraft?

The Rand study concludes that, even if the problems requiring retrofits are identified later in the test program, the likely correction or retrofit costs are outweighed by the certain cost increases of delaying because of the punitive economics in going with a very low rate of production.

In summary, Mr. President, Rand concluded that by mid-1992, next calendar year, all of the potential showstoppers will have been tested, and it will then be time to begin to increase the production rate. The B–2 provision in this committee report, and in our bill, is consistent with this Rand recommendation—no funds for the four new B–2's can be obligated, until the 1992 flight test requirements have been successfully met. We put a fence around the money and say that you cannot begin this production expenditure, until the tests that we specified have been met.

This brings us to the question of the B–2 missions. Mr. President, some have argued that even if the B–2 works as advertised, it has no real mission. I have heard that over and over again. I find it puzzling but, nevertheless, some people make that argument. The opponents of the B–2, I believe, are rather disingenuous in their argument on this issue. Their main line of argument appears to be something like: "Well, the

year before last, the Air Force talked about going after mobile missiles. Last year, they talked about nuclear deterrence. This year they are talking about conventional bombing. Since they keep changing their story, there must not be any real mission for the B–2." That is the argument.

The first piece of evidence is a recently-declassified mission statement that was adopted for the B–2 in 1981. At that time, the B–2 was called the "advanced strategic penetrating aircraft." Just quoting from that 1981 mission statement, I think it is a complete and total rebuttal of those who argue that the B–2 mission has changed and, therefore, the Air Force is simply pulling missions off the wall.

That document shows clearly:

Mission: The Advanced Strategic Penetrating Aircraft shall provide the capability to conduct missions across the spectrum of conflict, including general nuclear war, conventional conflict, and peacetime/crisis situations.

Mr. President, even back in 1981, much closer to the beginning of this program, the B–2 was clearly envisioned as a multi-purpose, multi-mission bomber. To claim that no mission exists because the Air Force has emphasized different missions at different times, I believe, is misleading, as a brief look at the B–52 suggests. When first produced over 40 years ago, the B–52's only mission at that time, at the beginning, was high-altitude strategic nuclear bombing. But over the last 40 years, the B–52 has learned a lot of new tricks, including, to list just a few of them: low level nuclear missions, with terrain following; infrared and electro-optical search sensors; conventional weapons bombardment; air-dropping naval mines; using the Harpoon missile to attack surface ships; launching nuclear cruise missiles; launching conventional cruise missiles; and even launching space boosters to put satellites into orbit.

I have not heard anybody suggest, in the last 20 years, that the B–52 has no real mission. Over the next 20 years, in addition to all the missions already identified, history suggests the B–2 will be given many more missions than originally envisioned. The history of the B–52 shows us the ability of a large payload, long-range aircraft, to learn many new tricks. With the addition of Stealth, the B–2 will surely prove to be even more versatile over its lifetime than the B–52 has been.

Mr. President, one other major criticism is—and, of course, the most difficult criticism to deal with—because it is expensive. The B–2 is expensive. The question is: Is it affordable? Let me address the cost issue briefly. Here the critics argue that, even if it worked as advertised, and even if it had a mission, the B–2 just is not affordable. Today, the B–2 program is at a crossroads. Virtually all the research and development expenses are behind us. Virtually all of the production base has already been bought and paid for. Counting the test aircraft to be refurbished and delivered to SAC at the end of the flight test program, Congress has authorized and funded 15 of the 75 planned B–2's.

One option is to quit now. That is what we are going to be voting on. Do we quit now, as this amendment recommends? If we do, we will end up with 15 B–2's, and for people who are concerned about per unit cost, we will have spent $37.1 billion to build only 15 B–2's. That amounts to a per unit cost of $2.5 billion for each B–2. But if this amendment is adopted, we will really spend $37 billion to buy very little, because 15 B–2's really is not a sufficient force size to be realistic in terms of operational requirements.

Mr. President, we have another alternative. We can go forward with the B–2 Program. For $27.3 billion more than the cost of this amendment, we can procure the last 60 B–2's, which amounts to an incremental cost of $455 million for each of these 60 B–2's.

Mr. President, note what the numbers say. We have spent $37 billion to get the first 15 B–2's. We have invested a huge amount in research and development and of course that will pour over and help in other programs, there is no doubt about that. So it is not confined simply to the B–2. We can get the next 60 B–2's for $27 billion. That is a lot of money but the B–2 will be a mainstay for our strategic and conventional programs for the next 30 years.

We get four times as many B–2's for $10 billion less than the first 15.

Now for $455 million for each of the last 60 B–2's, that also seems like a substantial sum, and of course it is, but you need to also consider, all of us need to consider, what new aircraft cost today with very little capability to even maybe have a reference point to the B–2.

Let us take a C–47 passenger airplane. These days the 747 costs $160 million, $160 million for a 747. An even better comparison is to the cost of two 747's that are used for the President, the Air Force One aircraft. It has been widely reported in the industry that each Air Force One will cost well over $300 million a copy. So everything is relative in terms of cost. Big aircraft cost a lot of money; the question is whether they are cost effective.

I might also note the committee bill includes 2 JSTARS aircraft, which we used successfully in Desert Storm. These Boeing 707 aircraft modified to carry a moving target or radar, at $455 million apiece, but well worth the price as we found out in Operation Desert Storm.

Mr. President, the B–2 opponents talk a lot about high cost and unaffordability of the B–2. Unless we discuss effectiveness and what the performance can be of the B–2 as well as the cost, no one can make an adequate judgment whether $455 million per plane is reasonable or totally unreasonable. The cost effective case is laid out in some detail in the report accompanying our bill.

This Air Force chart has been drawn from real world experiences during Operation Desert Storm. I understand that Senator EXON, the chairman of our Strategic Subcommittee, went into considerable detail on that so I will not repeat it.

Mr. President, let me close by saying that we in our committee have concluded that the B–2 is cost effective. The Senate will have to make that judgment in a few minutes. We have not only concluded that, we have concluded that with the effectiveness of the B–2 we are going to be able to make substantial additional reductions in the 5-year defense plan and even more in the 10-year defense plan than we anticipated. The B–2 can take the place of a lot of our existing force structure.

We have directed the Secretary of Defense to take a look at where we can save force structure in the Air Force itself and where we can save operation costs by substituting the B–2 for some existing aircraft. The B–2 has a tremendous multiplier effect. It requires very few tankers. It can fly from this country, without being stationed in a foreign country where it has to have tremendous operational base support. There are all sorts of things the B–2 can do. It not only applies to the Air Force.

This is a sensitive subject to some, I know, but the B–2 has just good long-range capabilities. I think the Secretary of Defense has to take a look at the Navy and take a look now at what Navy missions could be performed by the B–2. Do we need the same kind of aircraft flying off aircraft carriers? Do we need to have long-range bombers flying off aircraft carriers or can the B–2 basically take care of a portion of that mission?

I am not suggesting we do not need aircraft carriers, but I think we can take a close look at how we are spending on them, how many we need and what kind of aircraft go on those. We are going to have to take a look across all the services, because I think the B–2 is not just evolutionary, it is more aptly described as revolutionary technology. We have not had this kind of capability.

Mr. President, I believe it would be a very great mistake for the Senate of the United States to, in effect, cancel the B–2 Program. I urge our colleagues to vote against the pending amendment.

The PRESIDING OFFICER. Senator NUNN has 54 minutes and 30 seconds. Senator WARNER has 24 minutes and 30 seconds remaining.

Mr. WARNER. Mr. President, I yield myself such time as I may require.

Mr. President, I would like to refer to a letter from the President of the United States dated July 31, 1991, which was inserted by this Senator into the RECORD early this morning. Reading from page 2, the President directs the attention of the Senate to this program which he regards as his highest priority in the current Defense authorization bill.

I am likewise committed to the B-2. The B-2 and START are a perfect match. This revolutionary aircraft is at the center of the modernization of our nuclear deterrents. Other modernization programs such as the rail garrison, peacekeeper, advance cruise missile and Trident submarine programs have been cut back or terminated because of the tight defense budgets. We should remember even under START the Soviet Union will have a fully modernized and containable strategic force. If our Nation is to continue to have a credible bomber force and deterrents, we need the B-2 bomber. There is no substitute for it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I allocate to the Senator from New Mexico 5 minutes, and the Senator from Texas 2 minutes.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 5 minutes.

Mr. DOMENICI. Mr. President, I have been present and listening to the distinguished Senator from Georgia and the Senator from Virginia, and I will not repeat the relative costs of these magnificant planes under the amendment that is pending, as compared with the cost per airplane under the bill. I would merely indicate that we have already made the kind of expenditures that, in my opinion, require that we proceed to use this technology, this cutting edge technology that is now in the form of B-2 Stealth airplane. I would indicate that we go ahead and buy the number of airplanes in the bill.

It is obvious that some would say we cannot afford this. But let me suggest that when you look at the defense of our country, how much we are going to spend, that we have a pretty good test by way of the amount that we have agreed will be spent by the Defense Department under the budget agreement that we negotiated last year.

As a matter of fact, Mr. President, we have the defense of our Nation coming down so rapidly in terms of overall costs, that by the last year of that agreement we will be spending only 3.6 percent of our gross national product on defense. For comparison purposes, defense spending was high as 6.3 percent of GNP within the last 10 years. That means we are reducing dramatically in response to a changing world and to fiscal policies and problems at home with reference to available resources.

With the budget agreement, the military of the United States set about to reduce expenditures for various programs, for various arms, for various equipment, and for manpower. Even under those restrictive circumstances the conclusion was that we should buy B-2 bombers for the Air Force and for the United States. The budget for the military has been adjusted accordingly. We can pay for the B-2 by what is in this bill because it is provided for in the 5-year plan budget agreement and in the future years defense plan encapsulated in the President's budget for the United States.

I think it is fair to say that we can afford the B-2. Everyone remembers the scenes of the F-117, the Stealth fighter. It should be noted, without talking about details, that the F-117 is relatively old technologically, in comparison to the B-2 that we are now buying. The F-117 is the first of the Stealths. Imagine what a B-2 fleet could have done in the Persian Gulf if it had indeed been available to the President of the United States and our commanders who had to engage in that war. One only needs to speculate as to the risk that it would have eliminated and the kind of manpower and facilities that it would have substituted for.

It is obvious to me that a new Stealth will be as stealthy as the old one, if not more so. The B-2 could have accomplished all of those missions that the F-117 did and more. With the B-2 it's possible that fewer aircraft carriers would have been needed. It is possible that less manpower would have been needed. And that is just taking one situation in the world and not taking the whole world in all of the events and eventualities that might accrue and occur to the United States.

So I commend the committee and I commend the chairman and the distinguished Senator from Virginia, who is ranking member, because I think all things considered they have produced a bill and they have produced a buy on the B-2 that makes sense.

Obviously we are not going to buy the B-2 unless it works. That requirement is built into the bill and applies to the B-2.

This Senator has been privileged to see the B-2 in California; to view it up close and to see it fly. Frankly, it is a rather incredible machine. It is different than anything I would have imagined we could have put in the air.

Mr. President, the Senate Armed Services Committee action follows the President's request which would continue the 75 aircraft program. It is in sharp contrast to the House action, which would terminate the program at 15 aircraft.

THE PRESIDENT'S PLAN

Under the administration's plan the total cost of building a 75-plane fleet is $64.8 billion, current dollars, or $860 million per aircraft. The average "flyaway" cost of the B-2 under the administration's plan—that is, the cost per plane after completing the R&D program—is $560 million per aircraft.

The Senate Armed Services Committee report suggests that several billion dollars in total program costs might be saved if the program is accelerated.

THE HOUSE PLAN

House action, and the pending amendment, would terminate the program at the current authorization of 15 aircraft. Under the House version of the defense authorization bill the total program cost would be $36.4 billion, current dollars, or $2.4 billion per aircraft. The average flyaway cost per plane under the House plan is about $1 billion per aircraft.

Mr. President, these figures starkly illustrate the B-2 budget choice before the Congress this year. Under the House plan we buy only 15 aircraft at a very high unit cost. Under the administration's plan we buy 75 aircraft, with a much lower unit cost. However, the extra aircraft add $28.4 billion to the defense budget through fiscal year 1997.

In my opinion this $28 billion—a few billion dollars less if the Congress speeds up the procurement schedule as suggested by the Senate Armed Services Committee—decision rests on the answer to three questions. Can we afford it; do we need it; and will it work?

CAN WE AFFORD THE B-2

With respect to affordability, I will simply note that the B-2 fits into the President's plan for defense. Under the President's plan defense spending will fall, by 1996, to 3.6 percent of GNP and 18 percent of Federal outlays. By either measure, defense spending will be at its lowest level in over 50 years. Neither the defense budget in general nor the B-2 in particular is driving our budgetary problems today. Yes, we can afford the B-2.

SHOULD WE BUY 75 B-2 AIRCRAFT

With respect to whether or not we need 75 B-2 aircraft, I think we do. The B-2 has two roles: one for nuclear deterrence and one for conventional warfighting. The aircraft excels in both roles.

NUCLEAR ROLE OF THE B-2

For nuclear deterrence the B-2 is effective. It can penetrate sophisticated air defenses to deliver its ordnance. In the words of nuclear planners the B-2 is also stabilizing. Stability comes from its crew—it can be recalled—and its speed—it is too slow to be considered a first strike weapon. Because of its stabilizing characteristics, the B-2 is endorsed by counting rules in the START Treaty.

CONVENTIONAL ROLE OF THE B-2

Everyone knows that the B-2 was originally designed for nuclear deterrence. However, the B-2 was never envisioned solely for nuclear weapons delivery. The Air Force has long espoused its conventional role. The B-2 combines the attributes of the F-117—stealth and precision-guided muni-

tions—with the range and and payload characteristics of the strategic bomber—five to six times greater than the F–117.

With these attributes, the B–2 is capable of striking anywhere in the world with near impunity. If the President had had a full complement of 75 B–2 aircraft a year ago, he would have had the option to respond to Iraqi aggression quickly and decisively, and he would have been able to mount the response from United States bases. He would not have required access to foreign bases, nor would he have required that aircraft carriers be moved into place.

We can never be completely sure that one particular weapon system is an absolute requirement for our national security. The B–2 provides a huge leap in capabilities, for admittedly a large cost. But most of those costs are already sunk. For both its nuclear and its conventional capabilities I believe we need the B–2.

WILL THE B–2 WORK

With respect to whether or not the B–2 will work as advertised, I note that both the Defense Department's Directorate of Operational Test and Evaluation as well as the Defense Science Board have certified that the B–2 flies as expected and has the low observability characteristics that were expected.

The B–2 still has some testing milestones to complete before we can conclude that it will work as advertised. The Senate Armed Services Committee bill provides that the Secretary of Defense must certify, to the congressional defense committees, that B–2 performance milestones have been met before the Air Force can obligate funds for new production aircraft. I am sure that the B–2 will perform as designed but reassured none-the-less by the bill's requirements.

CONCLUSION

Mr. President, for the reasons I've just described I urge my colleagues to support the B–2.

Mr. GRAMM. Mr. President, I am for the B–2. We need it. I think if there is anything we learned from the war in the Middle East it is that high technology is the key to protecting American lives and winning conflicts when we are forced to enter them.

We have spent $35 billion on R&D and, so far, to have three Stealth bombers delivered. For an additional $30 billion, we can have 72 more delivered, complete the program, and have 75 in the inventory, and in the process spend less than we have spent to do R&D and get 3 planes flying.

I think to terminate the program now would be a very foolish policy to undertake. I vigorously oppose it. We need this bomber. We have already paid for it. Why not bring it into the inventory? I think it is an effective deterrent.

I think with the START Treaty it becomes more important than ever before. And I think it is vitally important that the plane be built, that it be deployed, and that it be our primary bomber as we look into the 21st century.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. COHEN. Mr. President, how much time do the proponents of the amendment have?

The PRESIDING OFFICER. The proponents have 47 minutes remaining.

Mr. COHEN. How much time does the Senator from Ohio seek?

Mr. GLENN. Fifteen minutes.

Mr. COHEN. I yield 15 minutes to the Senator from Ohio.

Mr. LEAHY. Mr. President, how much time is left to the Senator from Maine and I after that?

The PRESIDING OFFICER. After the 15 minutes, you have 32 minutes remaining.

The Senator from New Hampshire.

Mr. SMITH. Mr. President, I rise in opposition to the Leahy-Cohen amendment.

The PRESIDING OFFICER. Will the Senator from New Hampshire suspend?

How much time is yielded to the Senator from New Hampshire?

Mr. LEAHY. Fifteen minutes has been yielded to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from New Hampshire was recognized previously. The Senator from Ohio does have 15 minutes and will be recognized upon the completion of the Senator from New Hampshire. The Chair is just inquiring as to how much time is yielded to the Senator from New Hampshire.

The Senator is recognized for 7 minutes.

Mr. SMITH. Mr. President, during the Armed Services Committee's deliberations this year, I often expressed concern over the apparent lack of a comprehensive, integrated strategy for modernization of our strategic forces. Many times we look at the weapons systems individually rather than as part of a comprehensive package. We cannot do that in isolation. We must have a clear vision of how the individual components affect the aggregate total. In my opinion, this type of practice undermines the budget process and leads to shortsighted, counterproductive decisions that are often based on parochialism rather than national security requirements.

For that reason, Mr. President, throughout the Armed Services Committee's deliberations on strategic modernization, I withheld my support for the B–2. I wanted to be certain that, prior to expressing my support for the B–2, we would have a comprehensive, strategic package, including a good, strong SDI. And as we debate whether or not to authorize more B–2 bombers, it is imperative that we consider not just the operational capabilities and the cost of this aircraft but also how the B–2 bomber will complement the overall strategic and conventional force posture.

Mr. President, We cannot become so absorbed with the political and microeconomic issues surrounding the program that we lose sight of the big picture.

Even though I have been impressed with the test results to date, I was compelled to withhold my support for the B–2 in committee until we had a clear impression of what the Senate's action would be on SDI.

Earlier today, the Senate correctly rejected amendments which would have weakened the committee's position on SDI. For that reason, I now support the B–2.

I believe the B–2 must be considered as an integral element of the strategic package, including the triad of offensive forces and strategic defenses. While superpower relations are clearly improving, deterring Soviet strategic nuclear capabilities remains our central national security concern. We must ensure that tomorrow's force structure, while being limited in numbers due to fiscal and arms control constraints, is not limited in capability.

Now, Mr. President, just as the B–2 complements the land and sea-based legs of the nuclear triad, its survivability and credibility is inextricably linked to strategic defense. Because unless we can guarantee that the B–2 force would survive a Soviet or any other country's first strike, its operational value is essentially negated. In my opinion, there exists distinct linkage between strategic offensive and defensive forces. And I would say to my colleagues that the compromise of any single element unavoidably subverts the entire strategic package.

As my colleagues know, the Soviet's maintain the most extensive and sophisticated air defense network in the world. In light of current performance deficiencies in the B–1's electronic countermeasures system and projected Soviet advances in air defense technologies, the B–2 represents the only penetrating bomber capable of surviving future battlefield threats.

Furthermore, the B–2 provides enormous conventional warfighting capabilities. Indeed, by combining the survivablity of the F–117's with the range and payload of the B–52's, the B–2 represents a formidable conventional platform. Moreover, the B–2 can penetrate enemy air space with fewer support assets and preserve the element of surprise. This permits rapid suppression of ground-based air defenses, more accurate delivery of munitions, and most importantly, sends fewer American soldiers into harms way.

Mr. President, the bill before us strikes an effective balance between

strategic offensive and defense forces. Within this context, I will support the B–2 program as an integral component of the strategic package.

I urge my colleagues to oppose the Leahy-Cohen amendment. I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized for 15 minutes.

Mr. GLENN. Mr. President, everybody always gets up on the floor and says I rise in strong support of whatever it is. That is customary. I do not do that. I rise regrettably in support of this amendment that I am a cosponsor of.

This plane has made a great aerodynamic advance for this country. It has a new character, not only aerodynamically—flying wing, lots of lift, big load, smaller aircraft, all the things we like to see. It also has low observability, it is going to be stealthy. We are not going to be able to see it with radar, at least not with the current frequencies and the things the Soviets have available unless they go in different directions which would be enormously expensive to them.

So I would like to have this kind of a capability, a new aerodynamic capability. As a pilot of longstanding I would love to see that. I would like to fly it myself if I could, and I would like to have that LO capability. But I have one very basic problem with this airplane, and I speak as one who supported it all through the early years up until last year. This thing just got out of hand, expense-wise. That is the nub of it.

When you are talking about $860 million per aircraft, it is very difficult for me to support that kind of cost, for one single airplane that we, really, are still sort of looking for a mission to assign it to. We have gone through that for the last couple of years. It is not that I do not want the airplane, I do want the airplane. But it is just too expensive when we are talking about $860 million a copy now, and probably talking about $1 billion per aircraft later, each and every aircraft, by the time we actually get the thing out there, if we do.

I know the argument on the other side. The argument is we have sunk costs yes, but those are behind us. Look forward. Do not look back, JOHN, look forward on this thing. What is it going to cost us to procure this aircraft from here on out? We can not unring that bell that was already rung back there behind us. We have already spent that money. What are we going to do?

Well, if you take the sunk costs out, the future costs of the airplane still are estimated to be somewhere around $450 million, $475 million per airplane, even taking the sunk costs out.

So, can we afford that? That is why I changed my mind, last year, as much as I would like to have this airplane. So I say I rise regrettably.

Let me add one other thing that, I think, is a factor in this.

I know the gospel according to Washington is that we need a triad, that we have to have a triad, and we have to have that method of delivery by ICBM, by SLBM, and by manned bomber to deliver nuclear weapons.

I must say I never have bought that concept in all the years it has been put forward. I think the triad concept is a faulty concept going in. Let me tell my colleagues why.

The United States of America is never going to go someplace and drop nuclear weapons first with a penetrating bomber. We are never going to do that. This means, if nuclear war starts, we will have already responded with ICBM's, with SLBM's, with all sorts of missiles going back and forth, before a manned bomber drops its weapons on a penetration mission—God forbid we ever get into that kind of exchange. But if it happens, that is how the nuclear war would start.

We would not be the first to send a nuclear missile over there. We would be responding with our missiles in a war situation. And then the B–2 proponents say with perhaps dozens or even hundreds of nuclear weapons going off in a major exchange, we are going to put a couple of people in a penetrating bomber and fly them in to Moscow to add a couple of more pops to all that stuff going off? That is supposed to threaten the Soviet Union if we have that kind of a capability? It really does not make much sense to me, and never has.

That is why I never supported the B–1 on the basis that it was a penetrating bomber. I supported it on this floor, at this very desk, years ago and led some of that fight for the B–1 because I felt we needed a conventional bomber, a conventional capability. Those who were here at that time who participated will well remember some of those debates. We had some very long, hard, and very good debates over that. I supported the B–1 on that basis.

I felt we got the nuclear capability at a reasonably cheap price. That was sort of a freebie. We got that on the side.

That was my view of the B–1, and I supported it all these years on that basis. The B–1 has had its own problems. The Air Force managed it. In fact, they were their own prime contractor on that. They developed the ECM for it. But it did not work out quite they way they had hoped. Even today it is having some problems as is evidenced by the letters just distributed, but I have no doubt the B–1 is still going to be a good conventional airplane after we get this current fix. Every new airplane has some development problems, just as the B–2 undoubtedly will have problems.

So, this idea that we are going to provide some way of flying into Moscow to drop nuclear weapons is not something I ever have believed was really something we were likely to do. I supported the B–1 for its conventional capability. As for the B–2, well we never used to talk about its conventional capability at all.

Let me add one more thing on the B–1. I am very disappointed in the Air Force. Through all these years, every year I would stand on the Senate floor or in committee and I would ask how is the conventional testing coming? They would tell me, yes, we have that, it is moving along. We are doing some things there.

I trusted the Air Force all these years. It turned out that when the Persian Gulf started and we said, are they going to send the B–1 over, the Air Force had not qualified the B–1 yet for one single conventional bomb drop. They had qualified it for nuclear weapons only.

I make no bones about it, and I am sure there are people watching the tube over in the Pentagon right now, and I make no bones about it, I am very unhappy. I have expressed that to Air Force leadership myself, personally. So they are very much aware how I feel I was misled all these years.

Now we have a follow-on B–2. This year, in light of the Persian Gulf, and in light of the effective standdown of the Soviets in some of these nuclear areas, at least temporarily—although they still have their ICBM's over there, of course—now for the first time this year, all of the charts we were presented on B–2 showed it as a conventional weapons delivery system. It may not be used against the Soviets. It may be used in one of the regional conflicts. We may have one somewhere around the world, and I agree we are going to need something perhaps that can avoid radar in those areas, whether we have a penetrating bomber, whether we talk about triad, or whatever else we do.

But my point is, at $860 million for each and every aircraft? I would like to have the aerodynamics of this thing, I would like to have the LO, low observability, the stealth characteristics, but I am just frozen out of this thing by not being willing to say that we have a blank check for every weapons system that comes along. It just is too expensive, as far as I see it. I hate to say that, but I do not know how you realistically can do anything else.

The mission for the B–2 has been talked about a lot. There was an earlier claim for the aircraft, that its capability was going to be to hunt down mobile missiles, the Soviet mobiles, 24's, 25's. Post nuclear exchange, we were going to go deep into the Soviet Union and not be detectable. That is a capability perhaps, but I think in the Persian Gulf we found out that, quite apart from Soviet forest areas, we found out even in the sands of the desert with nothing out there but an occasional palm tree or whatever for

hundreds of miles, and with every bit of airpower we could put over in flying high, low, and in between, and using radar and everything else, we had tremendous difficulties even locating the Scud missiles. We do not know to this very day how many Scud missiles they have over there. And that was the most perfect search conditions you could possibly set up anywhere in the whole world. Yet somehow we are supposed to go in with the B–2 and fly around and we are going to somehow locate the Soviet mobile missiles and put the B–2 on them before they can launch their missiles.

OK, maybe we would be able to do that sometimes. But even under the ideal conditions in the desert we could not really locate mobile weapons.

So is that mission for the B–2 a real mission? I do not know. I would rather doubt it. But I come back to my basic premise, and that is that this thing has just priced itself out of a range that we can afford, even though I would still prefer to have it.

Remember when all this was a black program, and it was black, black, black so long we could not even get any of the cost information on it? I remember one day up in room 407 up here in the Capitol when they finally gave us some of the cost information on the airplane, and the committee members that were there that day were flabbergasted. At that time, the overall program costs were on the order of a little over $400 million per copy, this is several years ago obviously, and we were shocked at that time that it was going to cost so much. But I even went along with it after that, up until last year.

So I am not questioning that the B–2 might pass all of its tests. It is just into its aerodynamic tests, its LO tests. We put hurdles on it in the committee. We could not spend certain sums on the aircraft until we had certain performance testing both in aerodynamics and in the low observability categories. I fought for those in committee. We got them in committee. I think I was the first to propose them in committee, as a matter of fact.

It was not that I was anti B–2. It was just that it was such a new, aerodynamically different airplane, and with the new stealth characteristics that we were not at all certain would work, that I wanted to see some of these things demonstrated before we went ahead and procured the airplane.

Meanwhile, the costs have just skyrocketed. And with all the other needs we have, with the needs we have in conventional weaponry in particular, they are huge right now. Even though we are downscaling our military and pulling some 494,000 people out over the next 5 years, we still have enormous needs in equipment and people. To think we are going to pay overall program costs of somewhere around $860 million per copy for the B–2, or even taking sunk costs out. Some $450 million-plus a copy does not make sense to me.

So just in this area of cost alone, I have to support the amendment that is before us, and I do so, as I said when I got up, regrettably because I would like to have this airplane with its aerodynamic advances and its LO characteristics. But I think that when we have to make the choices between this and some of the other things that our limited defense dollars are going to be spent for, I just say the B–2 has to be put off.

I support the B–2 airplanes that are ordered right now, so we can do a complete research program, a complete testing program to show that these things work, to determine what modifications we need to make it more workable, make it better, so if we ever have to start building stealthy airplanes in the future beyond what we are procuring now or planned right now, that we have the very best technology available that we possibly can have. But I just feel we have priced ourselves out of the market with this one. With regret, I must support the amendment that is before us on the floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia [Mr. NUNN].

Mr. NUNN. Mr. President, before yielding to the Senator from Idaho—and I will yield 4 minutes to him—it is my hope and we have sent out word that we are going to vote about 7 o'clock. I see the authors on the floor. Does that timeframe still seem feasible, if I can pose that question?

Mr. COHEN. May I inquire of the Senator from Georgia how much time he is going to consume before 7 o'clock?

Mr. NUNN. I know of no other speaker except the Senator from Idaho, which is 4 minutes approximately.

Mr. COHEN. Senator CRAIG has indicated he may want to speak briefly.

Mr. NUNN. I think we are talking about 8 minutes on our side.

Mr. COHEN. Senator CRAIG would like, I am told, 5 minutes. So we have a total of 9.

Mr. LEAHY. Mr. President, I say to the distinguished Senator from Georgia that I doubt that the managers of the amendment would need more time than that. So if he has sent out word that we may be voting around 7, he is probably going to find it is going to come about that time.

Mr. NUNN. Mr. President, we do not have a consent agreement, but it is our intention now to try to move to a vote around 7 o'clock. At that time, we will, of course, have to yield back all time. We will let everybody know that. We are hoping to have a vote by 7 o'clock, or no later than 5 or 10 minutes after.

Mr. LEAHY. Mr. President, if the Senator will yield, I think the cloakrooms would probably be well advised to get the word out to Senators that this may well be voted on at 7 or 7:05. I think the Senator from Georgia is correct.

Mr. NUNN. I thank the Senator from Vermont, and the Senator from Maine.

I yield 4 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 4 minutes.

Mr. SYMMS. I thank the Chair.

(The remarks of Mr. SYMMS pertaining to the introduction of S. 1617 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SYMMS. Mr. President, there has been a great deal said on this floor over these last many years about the B–2 bomber. I have to say that I had the privilege to serve on the subcommittee of the distinguished Senator from Ohio when I was a member of the Armed Services Committee. I guess I, too, would say I am saddened that he is standing on the floor opposing this marvelous new quantum leap forward in aerodynamics, in aviation, in Stealth capabilities, in all of the things that the B–2 bomber offers.

We have just witnessed, I say to my colleagues, the value of the F–117, what it can mean, where it can fly in over Baghdad over a very hostile environment, no escorts; all they had to have was an air-to-air refueler to help them get in, flying over the target, back out, never touched, never scratched; deliver the bombs on target.

The B–2, Mr. President, offers us a tremendous capability.

I will just say to my colleagues, weapons systems decisions are not based on costs alone; neither are they based on capability alone. It is the value of the military contribution, the strategy, the tactics, the capability; what the other side has to spend.

I know this weapons system is expensive. But believe me, Mr. President, for all of the rest of our potential adversaries in the world, for whatever it costs us to build 75 B–2 bombers, it will cost the other people in the world many times more to try to figure out how they are going to defend against them.

Mr. President, as a member of the Budget Committee and a former member of the Armed Services Committee, it does not take a rocket scientist to figure out we are downsizing the U.S. military. We are going from 14 carrier task forces down to 12. If we continue this projection into the future, by 1995 or the year 2000, we may be down to—hopefully it will not happen, but we could be down—to 10. So that means that you have 25 percent less coverage with a carrier task force than you have today.

We are cutting our Marine Corps down to 150,000 people. Our Marine

Corps will not be able to support three Marine expeditionary forces in the oceans of the world. They will cut down to two. So that means we have less.

The distinguished Senator from Ohio, who is a personal hero of this Senator—he knows that—made a compelling argument for why we need to build the B–2. He made the argument for the virtues of the airplane. He also made the argument that he has stood on this floor before and defended the B–1; that he supported the B–1 because it gave us a strategic tactical conventional bomber and thrown in as a fringe benefit was the penetrating capability for the nuclear offset and deterrent.

The PRESIDING OFFICER. The Chair informs the Senator that his 4 minutes have expired.

Mr. SYMMS. Mr. President, I yield myself 1 more minute.

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

Mr. SYMMS. Mr. President, I ask unanimous consent to print in the RECORD a letter to Chairman SAM NUNN from Donald Rice.

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

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
*Washington, DC, August 1, 1991.*

DEAR COLLEAGUE: The attached letter from Secretary of the Air Force Don Rice providing information on the B–1B may be relevant to the B–2 issue.

SAM NUNN.
PAT LEAHY.
JIM EXON.
JOHN WARNER.
BILL COHEN.
STROM THURMOND.

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SECRETARY OF THE AIR FORCE,
*Washington, DC, August 1, 1991.*

Hon. SAM NUNN,
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: In January 1991, the Air Logistics Center at Oklahoma City detected a small two inch crack on a B–1 aircraft undergoing standard inspection. The crack was in the longeron—a structural member that runs alongside the spine of the aircraft. The Air Force issued instructions to inspect the entire B–1B fleet. Cracks were found in 37 aircraft, which were then repaired using a reinforcing aluminum doubler and a drilled hole to stop crack migration.

Three weeks ago, a reinspection of a previously repaired B–1B revealed that the crack had migrated past the stop drill hole. the Air Force issued immediate instruction to inspect aircraft that had been previously repaired or had flown more than 100 hours since the previous fleetwide inspection. A total of seventeen aircraft were found to have crack migration. Of the seventeen, four have returned to flight and thirteen are being worked.

A new reinforcement kit using boron epoxy has been developed and was delivered last Friday. It is currently being installed on the first aircraft for evaluation. Twenty additional kits are being prepared for shipment. These kits will be installed and evaluated on a regular basis to ascertain if they will serve as a permanent fix. I will keep you informed on this issue.

Sincerely,

DONALD B. RICE.

Mr. SYMMS. Mr. President, if the United States of America has to downsize its Navy, its Marine Corps and its Army, it may well be that the B–2 bomber is the one way we will have to project force, if you will, to reach out and touch someone from the continental United States, Mr. President, in the conventional form with this magnificent platform that can fly anywhere in the world, penetrate, and return safely with a two-man crew.

I urge my colleagues to vote down this amendment and point out that I know the costs seem high. We simply have to make do with the funds that we have. This weapons system is needed.

Mr. President, there has been a great deal said about the B–2 over the last few years. Most focus on the issue of cost and, as elected officials, it is a matter that we should discuss. However, we must also discuss the value of the B–2 as well.

Weapon system decisions are not based on cost alone. Neither are they based on capability alone. It is the value of the military contribution of the system that should ultimately determine a program's fate. That is where the term "cost-effective" comes from. Only by addressing both aspects of any system can Congress make a reasonable decision about the B–2 or any other program. As events in the Persian Gulf have demonstrated, high-technology weaponry works and they saves lives. They may be more expensive than their predecessors, but in this Senator's opinion, the military value far exceeds that cost.

The first, and most important, thing to say about the B–2 is that it is truly a revolutionary weapon system. The application of low observable or stealth technology will allow the B–2 to penetrate and survive against even the most sophisticated enemy air defenses. The F–117 Stealth fighter has proven the concept of Stealth and the B–2 will take that concept significantly further.

Also, the B–2 is a continuation of our national strategy to rely on our superior technology to offset an adversary's numerical superiority. This strategy worked with tremendous, positive results in Operation Desert Storm. For us to not aggressively pursue our technological edge seems to me to be wrong-headed at the very least, given what we observed in the gulf war.

The B–2 also imposes massive costs on any potential adversary. Estimates are that approximately $300 to $400 billion of Soviet investment in air defense alone will be invalidated—rendered virtually useless—by the B–2. The turmoil in the Soviet Union and the military crackdown in the Baltic States should point clearly that it is totally presumptuous for the United States to assume the Soviet threat to our security and national interests has diminished or disappeared. Quite to the contrary, Mr. President. The gravest hours which will determine the Soviet's position in world politics are yet to come.

Additionally, every potential adversary outside the Soviet Union must also recognize that their air space is now vulnerable to United States B–2 bombers. This capability will certainly cause any aggressor to consider the consequences before launching an armed attack. And that, Mr. President, is the true measure of military value.

Another important point that should be raised, Mr. President, pertains to the recent signing of the Strategic Arms Reduction Treaty between the United States and the Soviet Union. It is clear to this Senator that the B–2 will positively contribute to the arms control process.

As I understand the START Treaty, each penetrating heavy bomber will count as one strategic nuclear delivery vehicle of the 1,600 total permitted. Each penetrating bomber's non-air-launched cruise missile payload will count as one warhead against the 6,000 warhead total, regardless of the number of gravity bombs and short-range attack missiles carried by the bomber.

It is clear that, in part because of their stabilizing character, heavy bombers of the penetrating type are an extremely effective way to deploy warheads as a result of the current counting rules. The advantage derived by a penetrating bomber force is further enhanced by the unique operational capabilities of the B–2.

The B–2 provides flexibility and an ability to penetrate an adversary's most sophisticated defenses with increased survivability.

As total force levels decline under the START Treaty, the importance of each individual weapon system increases. It is important that our remaining systems be as versatile, capable and cost-effective as possible. The B–2, given its unique features and the advantages it presents under arms control treaties, is the only system that will contribute to both U.S. nuclear and conventional requirements well into the next century.

I urge my colleagues to support this vital program and resist any attempts to cut away at levels requested by the President and authorized by the Armed Services Committee.

I thank the indulgence of the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. I yield 5 minutes.

The PRESIDING OFFICER. The Senator from Georgia has 3 minutes and 45 seconds.

Mr. NUNN. Mr. President, I have 3 minutes and 45 seconds? I yield them to the Senator.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 3 minutes and 45 seconds.

Mr. CRAIG. I thank the chairman for yielding.

Mr. President, I, too, stand in strong support of the committee's position. I feel it is fundamentally important for this country to continue the building and the deployment of the B–2 necessary to provide us with that extra edge, that capability that was so effectively demonstrated in Desert Storm. No longer can we tolerate antiquity as it relates to our bomber force now that we have made the investment we have.

I think the citizens of this country well deserve to see the numbers spoken to from the committee and in this bill brought forward in deployment.

Mr. President, I wish to address two aspects relating to the B–2 bomber program: the B–2 in a changing world environment and the bomber's global reach/global power.

Given the recent events in the Soviet Union, the Warsaw Pact, Baltic States, and the Persian Gulf, it seems to me to be very critical to continue production of the B–2 program.

The mission of the B–2—a fundamental part of the air breathing leg of the strategic triad—is the same as that of every manned bomber since World War II: carry large conventional and nuclear payloads long distances, drop them on target and return. Obviously, the most important facet of this mission is strategic deterrence against the threat of nuclear attack from the Soviet Union. Despite the favorable trends in Eastern Europe, the Soviet Union's strategic nuclear capability still provides that Government with the means to destroy our country. The Soviet willingness to use military force in the Baltic States over the past months is a stark reminder of our need to pay attention to their military might.

The B–2 is needed to ensure that the flexible, recallable, manned bomber leg of the triad will have the necessary capability to hold a wide range of Soviet strategic targets at risk. Although the current trend within the Soviet Union might suggest that a nuclear attack is less likely than at any time in recent history, it is important to remember these changes have occurred only in the last 15 to 24 months. It is also important to remember that the next few years will continue to be characterized by instability in that country and will therefore constitute a most dangerous time period. It is wholly premature to deviate from a national security strategy that has thus far been very successful. After all even Mr. Gorbachev has admitted he fears the Soviet right and the military element with which it is closely aligned.

We know the B–2 offers the kind of flexibility necessary to address threats across the spectrum of conflict, including the ever more sophisticated capabilities being acquired by Third World countries. Large scale conflict in the Persian Gulf indicates how dramatic and dynamic events can change the world situation in a very short timeframe. Even with the potential for nuclear arms reductions, we need to maintain our long-term capability to respond with appropriate force until there is no longer a threat against our country, our allies or our vital national security interests, from any source; whether that threat is conventional or nuclear. The B–2 remains critical to ensuring this capability well into the next century and a military advantage that we must maintain.

Mr. President, I would also like to touch upon another aspect to this important program that should not be overlooked, and that is the unique capability of a stealthy bomber to deliver massive conventional firepower anywhere on the globe during the early hours and days of a crisis—before other forces have arrived.

Perhaps the earliest and clearest lesson of Operation Desert Shield, and the one most easily forgotten in the aftermath of Desert Storm, is that during the initial days of the United States deployment to Saudi Arabia, there was no shield. It took approximately 10 days to deploy enough American and allied military forces into the region to be able to block an Iraqi attempt to seize Saudi Arabia along with Kuwait.

Had Iraqi forces, immediately after seizing Kuwait, driven southward toward the oil fields of Saudi Arabia, Qatar, or the United Arab Emirates, Iraq could have gained control of over half the world's proven petroleum reserves.

What this initial period of strategic vulnerability highlights is a requirement that virtually no other weapon in the U.S. arsenal can address: the need to be able to bring heavy, conventional firepower to bear inside hostile airspace during the initial hours and days required for tactical air power, carrier battle groups and ground forces to arrive in numbers in a distant theater of combat. In a future contingency, the ability to bring such firepower to bear within hours could provide the narrow margin needed to prevent an aggressor from achieving a quick, cheap strategic success which, subsequently, could only be reversed at high cost in American lives and resources. Over time, such a capability could also assist in the establishment of a credible deterrent against the sort of military adventurism exhibited by Iraq in Kuwait.

Mr. President, only the B–2 offers the combination of global reach, heavy payload, and unparalleled survivability needed to meet this demanding mission. It also can do so with minimal risk to our pilots. Desert Storm has clearly demonstrated the advantages of advanced U.S. military technologies like Stealth when we are compelled by events to resort to use military force in defense of freedom. Systems like the B–2 offer advantages to our airmen commensurate with the risks they take in combat on our behalf.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I am not in much of a bargaining position. I do not seem to have time to yield back. But if I will yield, will Senators agree to yield back some time at this stage?

Mr. COHEN. At about 7 o'clock we could probably yield it back.

Mr. LEAHY. I think, Mr. President, on my time, for the sake of those Senators who are relying on the 7 o'clock time, I think it is very close to that.

I see the Senator from Maine on the floor, and I yield to him.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. COHEN. I would like to comment on the speech made by the Senator from Ohio [Mr. GLENN]. He raised the fundamental issue involved, namely, do we really have to have in today's age a penetrating bomber, and he called our attention to exactly what is involved.

If we ever, God forbid, have a nuclear exchange with the Soviet Union, what would be involved? The B–2 bomber is not a first-strike weapons system; it is a second-strike weapons system. That is its salability; you can recall it because it is slow flying. You can always get it back. In the event of a nuclear war, we would have a nuclear exchange with ICBM's and SLBM's. We would have these planes arriving over Soviet terratory 5, 6, 7 hours later doing what? Swooping in like a bat and looking for what? Mobile missiles? That is what the Air Force said when they sold us the first time on the B–2: We have to find those mobile missiles. And now they admit, well, we do not think the B–2 can do that.

And in spite of what took place in Iraq, where we could not find the mobile Scuds, they decided—I should not say in spite of; because of—they decided that is no longer a realistic mission. So we are now back to another type of mission. We are back to a conventional mission for the B–2. That will not be its primary mission, but it can carry it out. From those charts up there in the back of the room, those two B–2 bombers will carry out everything it took 75 aircraft to do during the Iraq war.

The question I have is can we not achieve the same kind of strategic deterrent with the B–1B loaded with air-launch cruise missiles, the advance cruise missile, the stealthy cruise missile, which we have paid for already? The answer is apparently not. Notwithstanding the promises of the Air Force going back to 1981 that: Trust us, the B–1B works; trust us, the electric coun-

termeasures work, we are now told, well, it did not measure up. We are sorry. The countermeasures do not work.

And, by the way, at 5:15 on the eve of the vote, we just found out we have some cracks in the B–1B. Lo and behold, they knew about this back in January. They thought it would be advisable to tell us they could not fix it. And so, at 5:15, we are notified they have some cracks. How serious, we do not know. We are only left to guess. It could be very serious: We cannot even fly the aircraft now, Therefore, what do we do? Are you going to stick us with these old B–52's, or are you going to do the right thing and come with the new B–2.

Let me say, we should be very skeptical about the timing of the Air Force. It said: Trust us on the B–1B. We will reduce that radar cross-section to one-hundredth of the B–52. We will get down to the insect level when it comes to the B–2 bomber. Trust us.

I will not take the time now because it is getting late, Mr. President, but I call my colleagues' attention to testimony by Secretary Rice, who indicated that the Defense Science Board is hopeful that the B–2 will be "the highly survivable aircraft that was intended" when the program started. That is what he cites.

But the Board also found reasons that perhaps they will not achieve their low observability standards. They indicated that perhaps we cannot quite measure up, meet up to those standards. Let me tell you what it says.

The Board indicates that the B–2 may not meet its original specification for low observability.

While the Board finds reasons why this might be acceptable, I would warn that it raises the possibility that, in the end, the B–2 could be declared to have adequate survivability no matter how far short it falls of its original signature specification. Indeed, the Board stated that "reasonable design trades involving signature" should be based not only on "what is needed for survivability" but also on "what is achievable."

Beware. Beware. That is the beginning of saying we put the specifications for low observability too low. We might not be able to measure up to them, so let's relax them a bit.

Mr. President, I believe we have exhausted the debate on this particular subject.

I ask my colleagues to call into question whether or not we need a penetrating bomber in this age. Whether or not we can achieve the same objective with air-launch cruise missiles carried by our B–52's or B–1B's, to the extent they do fly, and I believe they will be able to fly. Whether or not we can go to the taxpayers and say: "This is a wise expenditure of your tax dollars," at a time like this.

I submit that it is not; that we ought to support the Leahy-Cohen amendment, and I ask the support of my colleagues.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. NUNN. Mr. President, will the Senator yield me 30 seconds?

Mr. LEAHY. Of course.

Mr. NUNN. Just one point on the letter from the Secretary of the Air Force I think needs to be cleared up in the record. As the Senator from Maine knows, I requested that letter, and I requested that letter this afternoon to make sure every Member knew what the committees had been informed. The Air Force did inform the committees last week, late last week. I found out about it on Monday, and today I asked for the letter.

Mr. COHEN. If the Senator will yield, I did not find out about it until the Senator from Georgia called me into the room off the Senate floor.

Mr. NUNN. Correct.

Mr. COHEN. We discussed this about 5 o'clock this afternoon, and we agreed that all of our colleagues ought to be apprised of this. So I will say while the Senator from Georgia may have been informed last week, the full membership of the committee was not advised, and I did not receive notice, and the sponsor of the amendment did not receive notice, until about 5 o'clock this afternoon.

Mr. NUNN. The Senator is absolutely correct. I was notified on Monday, but I believe our staffs and committees were notified late last week; I understand on Friday.

Mr. LEAHY. Mr. President, I would also note that during the time the Air Force was trying to correct these problems, I was being informed by the Air Force at the highest level that there were no problems with the B–1B; I was told it was the finest long-range bomber in the world.

In fact, even though I had specifically asked if there were structural problems, I was told that there were none.

I mention this because the distinguished chairman of the authorizing committee was only informed this week. As a member of the Defense Appropriation Subcommittee, which has to vote on this, I was not informed until today. In fact, I had been advised the situation was quite to the contrary.

I mention this only because it raises very serious concerns in my mind about just how much faith we should put in assurances on the B–2. That is an issue, though, that every Senator has to decide. Senator COHEN, Senator NUNN, Senator WARNER, and I felt that we should make available the letter to everybody in the Senate. Every Member of the Senate will have to decide on their own how he or she reacts.

I will be very brief, Mr. President. I have heard during this debate that we spent so much money we do not want to waste it. Keep spending billions. This is like buying a car that is a complete lemon. The thing is falling apart but you say, I have so much money in it, I do not want to let it go.

The only time I have ever heard this faulty logic, other than on the Defense bill, is somebody playing a one-armed slot machine in Las Vegas: I have been putting quarters in this machine all day long. I have so much invested, I do not want to give up. Do not tell me the odds are against me. I have to keep putting it in, because I put so much in already.

Of course, they never hit the jackpot. We are not going to hit the jackpot here either.

The fact is, if people vote for the Leahy-Cohen amendment, if we are successful, you save the taxpayers $30 billion. If you vote against it, then we add another $30 billion to the money already spent on a problem-plagued airplane with no really definable mission.

Mr. President, just think. Yesterday, President Bush and President Gorbachev signed a historic agreement to reduce thousands of strategic nuclear warheads. The President of the United States and the President of the Soviet Union walked virtually arm in arm through Red Square, talking about the dawn of the new order. We are told, though, we must spend another $30 billion American taxpayers to build a plane that will bomb that same Red Square.

I think if we are truly in a new world order, the B–2 is the last vestige, probably the most expensive vestige, of the old world order.

Let us show the American people that we understand what everybody else in the world knows, that times are changing. We do have a new world, one where our competition will be more and more about how well we can compete in ideas, in educational systems, in the productivity of our industry, in the imagination of our inventors. But every one of these areas are shortchanged. We do not have the money for our schools. We do not have the money to aid the innovation of our inventors. We do not have the money to improve and modernize our infrastructure and our productivity. These areas may not be as glamorous as the B–2. But they are the ones that will allow us to compete. We will fall behind the Japanese, we will fall behind the European Community, we will fall behind most of the industrial world in areas ranging from health care to infant mortality, to education, and productivity.

Mr. President, if we want to remain the true superpower that we are today, we are not going to do it by frittering away our money on unnecessary and, frankly, even today, obsolete weapons

systems and starve those areas that will make us competitive as we go into the next century.

Let us show that the United States, which has been the preeminent power throughout this century, will go into the next century in that same position. We must be able to compete in a new world order for exports, ideas, and our dedication to freedom and democracy. Let us show the American taxpayers there is a better way to spend $30 billion. We have a deficit which costs us over $500 million in interest every single day. That makes no sense, Mr. President.

The U.S. Senate is paid to make tough choices. We are not paid to do the bidding of the defense contractors, or anybody else. We are paid to make tough choices for the American people. It is time to step up to the plate and do just that.

Mr. President, I see no other Senator wishing to speak. With that, I ask for the yeas and nays on the amendment.

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

The yeas and nays were ordered.

Mr. LEAHY. I yield the remainder of my time.

Mr. NUNN. Mr. President, I yield the remainder of my time, if any.

Mr. GORTON. Mr. President 22 years ago, in 1969, the Senate engaged in a heated debate over President Nixon's proposed Safeguard antiballistic missile [ABM] system. At that time, the proponents of missile defenses won the debate and Safeguard was deployed at Grand Forks, ND in 1975. On October 2, 1975, 1 day after Safeguard became operational, the House voted to deactivate the system. After a series of relatively close votes, the Senate also voted to deactivate Safeguard in November 1975.

The rationale used by those who supported deactivation was that the very limited capability of Safeguard's 100 ABM interceptors did not justify the huge operations and maintenance costs. Safeguard really fell victim to the ABM Treaty of 1972, which codified the notion that defenses in the nuclear age were somehow destabilizing.

Not since 1969 has the Senate had the opportunity to vote on the deployment of ballistic missile defense. It seems the Armed Services Committee has reached a consensus position on this important issue; as the SASC Report states "the time has come to move forward vigorously with defenses against ballistic missiles."

The committee's plan to deploy an ABM treaty-compliant ground-based interceptor site in 1996, as the initial step toward the multisite protection of the entire United States, is somewhat less than what the administration has proposed, but is a reasonable compromise, and although deployment of Brilliant Pebbles is deferred in the initial plan, robust funding for continued research and development of the space-based interceptors is recognized by the committee as an important requirement. When the time comes to make a deployment decision regarding Brilliant Pebbles, we will have a greater understanding of the ballistic missile threat, and will thus be able to better evaluate the contribution this important technology can make toward the protection of the United States and our friends and allies.

Critics of missile defenses, including the four Senators on the committee that voted against the consensus position, have taken to attacking the proposal with much the same arguments that were raised against Safeguard in 1969. Indeed, Senator KENNEDY, who is very much involved in the debate today, was in the vanguard of the opposition back then. AL GORE's father was also a vociferous opponent of ABM systems. The Senator's major concerns are that "if the committee's action becomes the policy of this country, it could undermine arms control and drain the treasury, truly endangering national security." For good measure he adds, "The committee position is likely to precipitate a Soviet response which is negative and could return us to the worst aspects of the cold war." (From Senators KENNEDY's and LEVIN's additional views to SASC Report.)

For comparison's sake. KENNEDY wrote in 1969: "As I view it, the truth about the ABM is that it is probably unworkable and potentially very costly. The consequence, as I view it, is another spiral in the arms race and a set back for arms control."

Today, there are few critics who would argue that highly effective defenses against limited ballistic missile attacks is unattainable with today's technology. Indeed, those like KENNEDY, GORE, and the Arms Control Association, are attacking the SASC compromise not on technical grounds but because they feel it will lead to a process that will dismantle the ABM Treaty. The implication being the end of arms control, the collapse of START, and a new round in the strategic arms race. As I view it, their arguments do not stand up to the test of history.

When the ABM Treaty was signed, the assumption was that limitations on defensive forces would lead to eventual reductions in offensive forces. This proved not to be the case. The recently concluded START agreement permits each side to have 6,000 accountable warheads—this is three times the number of warheads each side had back in 1972. So the theory limitations on defenses leads to limitations on offenses is spurious at best.

Support for the ABM Treaty is based on a more fundamental belief in the notion of strategic stability through mutual vulnerability. Under this paradigm, defenses are destabilizing because it undermines your adversary's retaliatory capability. Rather than take several pages to explain why I think this paradigm is based on faulty logic, let me just state that given the limited focus of GPALS—and what the SASC proposes—there is very little danger of upsetting this notion of deterrence through mutual vulnerability. In other words, the ability of GPALS to intercept up to 200 warheads—which is our goal—will have little consequence for a Soviet force consisting of over 6,000 warheads after START—deterrence through the threat of mutual destruction will still obtain.

But still, the critics believe that support for the SASC position will undermine arms control and lead the Soviets to renege on their START commitments. What they fail to understand is that arms control, rather than encouraging improved relations between the superpowers, has been the result of such improved relations. START and CFE would not have been possible without the dramatic changes in the Soviet Union, which precipitated better United States-Soviet relations. The Soviets will not abandon START—which they need more than the United States—because the United States has chosen to follow the path set out by the SASC on SDI. It is more likely that the Soviets will pursue their own missile defenses, for they are today in the range of many a short-range ballistic missile.

A 16–4 majority of the Armed Services Committee sees merit in moving toward theater and strategic ballistic missile defenses. We require the protection provided by these defenses because of the increased threat posed by the proliferation of ballistic missiles and a concern that political instabilities found worldwide could increase the potential for ballistic missile use, including accidental and unauthorized launches.

Those that continue to deny these realities are either pursuing a political agenda or stopped thinking about the subject back in 1969. As Tolstoy put it in this 1896 treatise, "What is Art", and I paraphrase: "Most men—even those who are really clever—can seldom discern even the simplest and most obvious truth if it obliges them to admit the falsity of conclusions they have formed—conclusions of which they are proud, which they have taught to others, and on which they have built their lives."

The truth they would deny is that ballistic missile defenses make sense in today's world; the conclusion they will not yield is the belief that the ABM Treaty, and the theory of deterrence through mutual vulnerability, is the cornerstone of United States-Soviet strategic relations.

The SASC made history by supporting a deployment objective for a lim-

ited ABM system. I defend this consensus against those that would place the protection of the ABM Treaty above the protection of the American people, its friends and allies.

Mr. METZENBAUM. Mr. President, what the Armed Services Committee has done with respect to star wars is incredible.

After 8 long years of public debate about whether the United States should spend hundreds of billions of dollars to deploy antimissile defenses, the committee, in closed session, approved a star wars plan that will both violate the terms of the 1972 Anti-Ballistic-Missile Treaty, and will wind up costing the taxpayers of this country $40, $50, or $100 billion before it is all over.

The committee gave President Bush authority to demand ABM Treaty amendments from the Soviets, and when the Soviets refuse to cooperate, which they surely will do, the committee set the stage for the United States to withdraw from the treaty entirely.

Now, Mr. President, I am not an expert on national security matters. But I know enough to pay attention to what the experts, both in and out of Government, have to say about such matters.

And what six of those experts, all former Secretaries of Defense, have said about the ABM Treaty is this:

> The ABM Treaty makes an important contribution to American security and to reducing the risk of nuclear war. By prohibiting nationwide deployment of strategic defenses, the treaty plays an important role in guaranteeing the effectiveness of our strategic deterrent and makes possible the negotiation of substantial reductions in strategic offensive forces. The prospect of such reductions makes it more important than ever that the United States and Soviet Governments both avoid actions that erode the ABM Treaty and bring to an end any prior departures from the terms of the treaty. * * *

Those six Americans are former Secretaries of Defense Harold Brown, Melvin Laird, Elliot Richardson, Clark Clifford, Robert McNamara, and James Schlesinger.

They are not alone in their thinking.

Mr. President, even I know that the Anti-Ballistic-Missile Treaty probably has been the most successful of all our arms control treaties with the Soviet Union.

By agreeing to forgo the construction of missile defense systems back in 1972, we prevented an explosion of arms race spending that would have cost the taxpayers of this country hundreds of billions of dollars.

Just as important—the treaty was signed because both the United States and the Soviets reached the hard-headed realization that neither side would ever prevail in a nuclear war.

And, neither side would ever be able to gain real protection against the thousands of nuclear warheads in each other's arsenals.

The ABM Treaty was signed because realists on both sides agreed that genuine security in the nuclear age could only be attained through the realization of mutual assured destruction—the ability of either the United States or the Soviet Union to destroy the other in response to an attack.

Finally, the ABM Treaty has been a foundation on which to build successive agreements controlling offensive nuclear weapons.

SALT 1 and SALT 2—and now—actual arms reduction embodied in the START Agreement—would never have been possible without the ABM Treaty.

That is why it is unbelievable to me that we are seriously considering the possibility of unilaterally abrogating the treaty.

Make no mistake about it. That is where the Armed Services Committee provision takes us.

The provision says, and I quote from section 211(g) of the bill:

> The President and the Congress shall assess the progress in the ABM Treaty amendments negotiation. If U.S. negotiating objectives * * * have not been achieved, the President and the Congress should at that time consider the options available to the United States as now exist under the ABM Treaty.

The only such option available to the United States is withdrawal from the treaty.

Why are we doing this?

The cold war is over. The Red Army is in retreat throughout Europe. The Soviet economy is in a shambles. Last week, President Gorbachev met—hat in hand—with the leaders of the free world asking for money to help rebuild his shattered economy.

He is trying to save his country from disintegrating. The last thing he needs or wants is another expensive round in the strategic arms race.

But I guarantee you, he will build an anti-ballistic missile system if he has to—if he feels threatened by the United States, he will do it—because politically, he will have to do it.

Now I understand that the Persian Gulf war changed the political calculus on antiballistic missile defenses.

When Patriot missiles started knocking down Iraqi scud missiles, I think everyone agreed that we needed better missile defenses to project ourselves and our allies against rogue, Third World dictators armed with ballistic missiles.

But the fact of the matter is, there isn't a single Third World country, except perhaps China, that has missiles capable of reaching the United States.

And if there were such a country, I doubt its leader would risk certain annihilation by lobbing a nuclear missile against one of our cities.

If mutual assured destruction deterred the most heavily armed nation on Earth from attacking us for 40 years, why will it not prevent Third World countries like Iraq or Libya from attacking us?

Certainly there are cheaper, easier and more surreptitious ways for a Third World fanatic to deliver a bomb against the United States—in a piece of luggage for instance.

So why are we doing this?

Why are we going to gut the ABM Treaty, and spend billions of dollars on some phony illusion that we can be forever safe against limited or accidental launches of nuclear weapons?

I will tell you why.

Because President Bush has caved in to the conservative Republican right who have made deployment of SDI part of their holy grail—regardless of whether or not it is needed.

And Democrats are caving in because they are shellshocked by the gulf war.

I do not fault the chairman of the Armed Services Committee, he had his hands full just getting a bill out of his committee.

And I honestly believe he is searching for a way out of building a full-fledged, space-based system that will drive the Soviets into a state of paranoia.

In addition to breaking the bank at home.

But I will say this.

It is time the Democrats in Congress stood up to the radical right. This project will cost $4.6 billion this year, and $41 billion over the next 6 years.

It is a policy driven by the remotest of possibilities.

It is an incredible waste of money.

And worst of all, we won't get a thing for it, except that trashing of the ABM Treaty.

Mr. President, I commend the Senators from Michigan and Delaware for offering this amendment.

I yield the floor.

DEFENSE WORK FORCE TRAINING PROGRAMS

Mr. LEVIN. Mr. President, I would like to take a moment to ask the chairman of the Subcommittee on Defense Industry and Technology for a clarification regarding language in the committee report dealing with defense work force training programs. The report language recommends an authorization of $20 million for the joint service education and training system for fiscal years 1992 and 1993. According to the report, this authorization is intended to permit the Defense Department to support work force training programs that demonstrate high potential to develop new work force training approaches and techniques. My question is this: Would work force training programs funded through the Defense Advanced Research Projects Agency [DARPA] be eligible to receive funds under this language?

Mr. BINGAMAN. Yes, programs funded through DARPA would be eligible under this language.

Mr. LEVIN. I thank the Senator from New Mexico for his clarification.

MILITARY DISABLED RETIREE PROTECTION ACT

Mr. MACK. Mr. President, the Senate Committee on Armed Services has

completed its markup of the Department of Defense authorization bill. As a member of this committee, I had the opportunity to actively participate in this long and difficult debate. It is a highly complex bill containing thousands of components.

However, I want to take this opportunity to bring to the attention of all Members one aspect of the DOD authorization bill of vital concern to thousands of disabled retired members of the Armed Forces. It involves S. 1383, the Military Disabled Retiree Protection Act of 1991. I commend my friend and colleague, Senator MCCAIN, for introducing this legislation. I am pleased to join Senator GRAHAM as an original cosponsor.

This bill will correct an obscure inequity in the current law which has left thousands of military retirees without many of the essential benefits covered by the CHAMPUS Program. As you know, Mr. President, when a military retiree who is 100-percent disabled requires continual medical care under CHAMPUS for more than 2 years, he or she is forced to enroll in Medicare. However, if the patient is under age 65, he or she is not eligible to purchase a supplemental policy to cover the gap in services Medicare will not provide. Tragically, the end result is nearly always financial ruin for the patient and his or her family. The bill will correct this inequity by mandating that CHAMPUS serve as a secondary payor to Medicare, thereby making up the difference in services not currently being provided by the Medicare program.

A tragic example of how this glitch in coverage affects families involves my constituents, Anthony and Terry Cox, of St. Petersburg, FL. For 22 years, Mr. Cox proudly served his country in the U.S. Army. In 1982, Mr. Cox sustained traumatic head injuries from a fall which left him a quadriplegic and unable to speak or even swallow. After 2 years of continuous care provided for under CHAMPUS, Mr. Cox was forced to go onto Medicare. Because of his age, he was unable to acquire a supplemental policy. For Mr. Cox, Medicare has been of little assistance as it offers very limited home health care. As is the case for virtually all families in this position, it has left the Coxes financially devastated. They have been forced to sell their home and declare bankruptcy. They still find themselves more than $200,000 in debt—a debt which grows daily.

Is this how the United States of America should treat the men and women who have served in our Armed Forces? Absolutely not, Mr. President.

As Mrs. Cox has said many times, "My husband spent his life serving his country. Now it's time for his country to start serving him." I would strongly urge my colleagues on the Senate Committee on Appropriations to include the same appropriation of $20 million as was included in the fiscal year 1992 House Department of Defense Appropriations bill to correct this inequity.

Mrs. Cox and other spouses of our retired military personnel in this same catch-22 situation are right. The U.S. Senate must correct this injustice and have CHAMPUS cover what Medicare doesn't. The simple fact is that the men and women who have served our country deserve better.

Mr. HEFLIN. Mr. President, I rise today to express my strong support for the continuation of the B–2 bomber program and its related stealth technologies. With the conclusion of Operation Desert Storm, we were able to evaluate the success of the F–117 and its invisibility in attacking critical or well-defended targets in Iraq and Kuwait. The shortcomings of this aircraft lay in its limited payload capacity and short range, which required repeated missions into hazardous airspace and forward logistical support. A bomber such as the B–2, with over 5 times the range and 10 times the payload capacity of the F–117, could provide such a conventional capability with less risk. The aircraft would also have the ability to deliver a greater variety and number of weapons, including precision guided munitions, to different targets. Furthermore, the B–2 would not require forward-staging areas due to its greater range, allowing valuable military assets to be utilized in another capacity.

The operations we undertook to liberate Kuwait utilized military hardware which had never been employed against an adversary before. Weapons such as cruise missiles performed admirably in their ability to strike specific targets with great accuracy. This accuracy began to deteriorate however, as the landscape began to change due to coalition air strikes. Cruise missiles are dependent on satellite technology for their terrain guidance systems, and as the terrain was being changed on an hourly basis, the ability of the weapons to be reprogrammed to strike their targets with accuracy deteriorated. The B–2 bomber would have the ability to hit a variety of targets accurately, as its advanced electronics and well-trained crew could adapt to a changing environment. Unlike ICBM's and cruise missiles the B–2 has the ability to react to unexpected defenses, engage a number of targets with a variety of payloads, and if need be, the bomber may be recalled at any time. The B–2's ability to carry both conventional and nuclear payloads allows it to be considerd as a multi-role system, providing the aircraft a flexible position in military tactics and strategy.

The performance goals which the B–2 program must meet during its development are extremely demanding, and the tests which this aircraft and its systems have undergone have proved to be some of the most comprehensive that any weapons system has ever endured. Congress has mandated that the procurement for the B–2 program is dependent upon the accomplishment of significant performance requirements. The B–2 is required to meet important goals in mission performance, low observables, air vehicle performance, integrated logistics support, and mission planning and training systems. As of June 1, 1991, the B–2 has successfully met the performance requirements for fiscal year 1991. I am satisfied by the achievements of this program to date, and I am confident that the program will reach the further goals which have been set. The investment we have made in the B–2 promises to offer not only a revolutionary aircraft, but further advances in stealth technology which will benefit our military for many years. The low observability features the B–2 has will preclude the need for airborne support, allowing resources to be maintained for other missions. In an increasingly hostile and sophisticated environment of air defenses, the survivability of our military hardware and the trained personnel to utilize the systems becomes a primary consideration. The B–2 bomber offers us the opportunity to expand upon this principle.

Mr. President, this program will provide evolution in a new generation of technology which will maintain our ability to counter aggression and preserve the freedom of nations throughout the world. The flexibility, control, and future prospects which the B–2 program has demonstrated will provide essential abilities in a continually changing international environment, where a threat to the peace within the international community may be met swiftly and with assured results. While I share my colleagues concern about the expense of this program, I consider an undertaking such as this, which will preserve the lives of American service men and women, of great merit. I ask my fellow Senators to join me in supporting continued research, operational testing, and development of the B–2 program.

Mr. SIMPSON. Mr. President, I rise in support of the distinguished Republican leader, Senator DOLE and in support of the B–2 bomber. As President Bush has stated, "There is no question that stealth works." It will contribute to nuclear deterrence and therefore, we cannot allow to stand the House actions that would terminate this vital program.

Stealth does work. It has been proven in combat. It broke the Iraqis' back and it saved American lives. It flew hundreds of sorties through the most heavily defended areas and came out without a scratch.

The B–2 takes the next generation of stealth technology and combines it with a strategic bomber. This technological advance will contribute unique-

ly to nuclear deterrence and will enhance the conventional capabilities of the F–117 Stealth fighter.

Manned penetrating bombers provide flexible, prompt, massive firepower in conventional conflicts. The most likely actual combat use of the B–2 will be in conventional conflict. It will provide an unmatched combination of range, payload, and efficiency in performing its operational missions.

The B–2 will restore the ability to penetrate heavily defended areas and targets, and ability that is being eroded because of the aging of current United States bombers and improved Soviet and regional defenses.

As the U.S. Air Force report to the 102d Congress stated, "The B–2's assured ability to penetrate modern defenses, coupled with its high survivability, long range, and heavy payload, allows the United States to bring precise, heavy conventional firepower to bear at virtually any time or place." The B–2's inherent freedom to operate without material support from other nations will offer the President effective, politically feasible, nonnuclear military options not otherwise available.

Mr. KERREY. Mr. President, I rise today to speak in support of the amendment offered by my colleagues, Senators COHEN, LEAHY, MCCAIN, and GLENN, which would continue funding for production of 15 B–2 bombers already authorized but would not, at this time, authorize 4 additional B–2's.

In doing so, I want to make clear that today I am taking a somewhat different position on the B–2 than I have in the past. Previously, I maintained the case for the B–2 had not been clearly made. Now, I believe a case for the B–2 has been made, particularly in the case of conventional warfare. The B–2 will extend the use of stealth technology whose merit was demonstrated in the gulf. It will also enhance the effectiveness of the longrange bombing capacity of our air forces.

However, while I have come to see the merits of the B–2, I am not persuaded that our arsenal needs to include more than 15 of these aircraft at this point in time. In the wake of the signing of the START Treaty and in the midst of monumental changes in the Soviet Union, there is no clear threat compelling us to spend the additional funds for four more B–2's.

Three questions frame this decision and all decisions on national security. Looking out toward our planning horizon—for at least the next decade—what risk confronts the United States of America? What strategy best meets that risk? And what force structure best executes that strategy?

The clearest answers to those questions, sadly, have not come from the White House or the Pentagon in recent years. They have come, instead, from the chairman of our Armed Services Committee, Senator NUNN. In several important speeches, Senator NUNN has set out a vision, driven not by immediate political calculations about what the right or left will think, but by long-term assessments of what our adversaries may do. He has taken accurate measure of the immense political changes in the Soviet Union, in Europe, in the Middle East, and in the technological changes in weaponry. And he has clearly defined the risk, the strategy, and the force structure.

Senator NUNN's advice establishes three principles. Look ahead and prepare for what you see. Plan to be ready. And be alert to the risk. I believe in those principles, although they lead me to somewhat different conclusions than Senator NUNN. They tell me that we need 15 B–2's, but not 75, and right now, not 19.

Mr. President, advocates of building a larger number of B–2 bombers tell us we must learn the lessons of the gulf war. That war did carry lessons. It confirmed there are times when we must use force. It revealed how effective our technology is.

But the gulf war held other lessons as well. One lesson came from General Schwarzkopf. His comments after the war significantly stressed combat's technological mules as much as its swans—the unglamorous as much as the sophisticated. He said what was ultimately important were our trucks; our mine-clearing ability; our sealift and airlift. That insight places upon any high technology weapon that would cost us $860 million per unit a very large burden of proof.

That burden has not been met. The rationale for the B–2 has changed from strategic to conventional. But in conventional missions, the B–2 is reusable—it can conduct repeated flights for a single mission—and the case has simply not been made that 15 of these highly efficient bombers is not enough.

Another lesson from the gulf was that simple comparisons of numbers are meaningless. Iraq had the world's fourth largest military, in numerical terms. But numbers don't fight. Iraq lacked the technology, the skills, the strategies, and—above all—the will to fight. These, not numbers, sealed our victory. So I am unmoved when I hear numerical comparisons with others, like the Soviets. Does anyone in this Chamber seriously believe the Soviets could fully project their numerical power when they cannot even stock their shelves? We cannot ignore the danger of a nation that has over 10,000 nuclear warheads pointed at us. But we must not overestimate the threat posed by that crippled and crumbling empire.

Finally, the gulf war taught the world that we have entered an era of one preeminent military power. We are preeminent, not just because of our arms, but because we have the technology, the skilled troops, the strategies, and the will to fight which make those arms preeminently effective. Unfortunately, we are not acting like a preeminent power. A preeminent power is not reactive. A preeminent power can afford to challenge other nations. Notwithstanding this week's welcome signing of the START Treaty, if we acted like the world's preeminent power, we would be doing much more than challenge the Soviets to deeper conventional and strategic arms reductions.

This week's debate over the B–2 provides a good example of how we continue to be reactive, as if we were still engaged in a battle of equals. One of the arguments that has been voiced for expanded production of the B–2 is that we can only afford to scale down our weapons capacity in ways that are readily reversible. We must keep production lines warm, so that if there is a sudden change in Soviet leadership, sudden increase in belligerence, we can readily resume the arms buildup.

Leave aside, for the moment, the fact that the B–2 production line is behind schedule. Leave aside that only 3 of the first 15 B–2's have been delivered. Leave aside that the $30 billion we have already appropriated for this plane ensures enough testing and production, even with 15 planes, to keep the production line, not warm, but hot, for some time.

What bothers me is the reactive assumption that mistakenly asserts we still face an equal adversary who can compete with our productive abilities. We do not. We face a disintegrating union whose GNP is plummeting by 15 percent or more this year; whose people are refusing to work; whose crops are rotting in the fields; whose technology is absolete; whose ability to do anything readily is almost nil. In that kind of competition, everything we do is readily reversible. We could turn Northrop's factories into a recreational theme park, and, given the Soviet Union's current condition, our action would still be readily reversible.

Mr. President, we face greater security challenges in this age than keeping our production lines warm. We need to make major investments, from aircraft to minesweepers, if we are to modernize our forces.

We need to invest substantial amounts of our energies, and even our resources, to control the proliferation of development and sales of weapons of mass destruction by nations like China—one of the greatest threats to global stability. In many ways, that may be a more challenging task that building a radar-evading plane out of space-age composites. For it will take coordination with other nations. It will take prolonged effort. It will even require monetary sacrifice—we might lose some grain sales to achieve that kind of goal—and it would be worth it.

We need to invest substantial amounts of thought into how we can better mobilize our strongest weapon—our democratic ideals—to make this a more stable, more humane, and less threatening world. Throughout the gulf war, I believe, we placed too little emphasis on the goal of creating more democratic regimes. For it is a nation's form of government, more than its stocks of weapons, that determines its belligerency. France has nuclear weapons, but because it is a democracy, we do not fear it. Iraq will hopefully soon lose its nuclear weapons technology, but we will still be wary of its actions because it remains a dictatorship.

Finally, Mr. President, I believe we need to invest more in the human element of our security. Not only the skills of those who fight on our behalf, but the skills of those who support the fight here at home. The case for investing in four additional B–2's is not clear, but the case for full funding of Head Start and the nutrition program for infants and pregnant women is clear. In an age of American military preeminence, our weapons-production decisions will almost always be readily reversible; but in an age of an intense global economic competition, our underinvestment in our children's minds and skills is not readily reversible. On both fronts, America's security risk is clear, and it compels my support today for the Leahy-Cohen amendment.

Mr. DODD. Mr. President, I intended to give a comprehensive statement later in the debate on various issues that are included in, or affected by, this bill. The issues, however, that we have been debating since yesterday afternoon and continue to debate today are so important that I feel compelled to address them briefly today. I am talking about the future of the SDI Program and also the B–2 bomber.

Listening to the SDI debate, occasionally I felt as if I entered a time warp. Some of the arguments I heard were very relevant only a few years ago, but are hopelessly out of date today.

Although I have consistently supported a vigorous SDI research effort, I have also had some problems with the program. First, I have never accepted the exaggerated, unrealistic claims of an imaginary umbrella that could save us from a massive Soviet strategic strike. I have seen no evidence that that has ever been a realistic goal worth pursuing.

Second, nothing ever has persuaded me to support the denunciation or the renegotiation of the ABM Treaty so far, and I emphasize so far. I agree with Senator CHAFEE who said this morning that there is nothing sacrosanct in the ABM Treaty that should bind us to it even after it would not be in our national interest to do so.

Third, I was always skeptical of the excessive level of funding requested by the administration and voted often to reduce it to a more moderate level.

These were my concerns with this program while still under the conditions of the cold war. When I voted in the spirit of these reservations, I did so in agreement with my colleagues who argued that instead of the exaggerated claims of that cosmic umbrella, we better concentrate on the more realistic and affordable goals on trying to protect our country from limited attacks by Second World and Third World madmen—that is, either an unauthorized attack by a renegade in the Soviet Union or an attack by a Saddam-type dictator.

It seems to me that the proposal in this bill does exactly that. It steps beyond cold war thinking. It puts the idea of defending against a massive strategic strike way back in the order of priorities. I suspect the only reason it did not completely abandon it was political, to retain sufficient support for the plan. In other words, Mr. President, this plan addresses the real threat of the future, the type of conflicts and dangers of which, I am afraid, the gulf war was only the first one.

I have been persuaded by the authors of this plan that nothing here is intended to threaten the Soviet Union, and the Soviets ought to have no reason to feel threatened by what is in the SDI portion of this bill. I believe that those who lead the Soviet Union today, Mr. Gorbachev and his supporters, know—I repeat—know, that we mean no harm to any of the peoples within today's Soviet Union. This plan must not be seen as a threat to their security, first of all because by the time anything included in this plan could be deployed we will have another Soviet Union—or its successors—totally different from that of today.

Given the rapid changes in the Soviet Union and the vastly increased trust between the two countries I find it totally conceivable that, should the need arise, we could renegotiate the ABM Treaty with the Soviets without acrimony, even in harmony. I certainly would not exclude this as a possibility.

In sum, I do not share the fears of some of my colleagues that we are starting down a dangerous road here, with respect to our strategic relationship with the Soviets. This is not a replay of the Soafer doctrine debate where I took a stand vigorously and repeatedly to maintain the integrity and the authentic interpretation of the ABM Treaty.

I emphasize that my views did not change. I see nothing that would allow, much less compel us to abandon that treaty. I supported the Bingaman and the Levin amendments precisely for this reason. At the same time I do not believe that we are starting on some slippery slope with the NUNN plan. I do not regard this plan as heresy. We cannot, however, contemplate the changing of the ABM Treaty unless we have at least some idea of what we may wish to accomplish.

In sum, Mr. President, I support the committee's work because it addresses the future, not the past. It aims at giving us the technology we will need at the start of the next millennium, in a post-cold-war world. This is the reason why I support the B–2 bomber as well. Stealth technology is the future in the kind of conflict we are likely to face after we minimize the chance for any major superpower conflagration.

While the B–2 was originally planned as a penetrating strategic bomber for a nuclear conflict, I strongly feel that its conventional utility is even more compelling. It is a painfully expensive bird, no doubt about that. Who can put a price, however, on the lives it would save in a conflict by its range, payload, effectiveness, and easy supportability—in terms of the dozens of more conventional aircraft that would be required to deliver the same punch at much higher cost and peril?

Mr. President, we have to face the dangers of the future, not the past. I commend my colleagues on the committee on both sides for having faced up to this task.

Mr. REID. Mr. President, a reunion of World War II Army Air Corps veterans will be held from September 11 to September 15, 1991, in Reno, NV, Bally's Hotel.

These men were members of the 95th Bombardment Group (Heavy). They were assigned to the 13th Combat Wing, 3d Air Division, 8th U.S. Air Force.

Between May 13, 1943, and May 14, 1945, these men were involved in major air battles that brought final victory to the Allied war effort.

The 95th Bomb Group was made up of gallant men who flew, maintained, or serviced the mission of the group. Heroes all.

The effectiveness of the air efforts are well documented. The loss of life, the prisoners of war, the wounded statistics show the costs of the victories. The magnificent ground performance.

The destruction of transportation systems, fuel refinery plants, and war production industries resulted in severely restricted enemy warfare and the lack of production. This resulted in saving a significant number of ground forces' lives.

The 95th Bomb Group participated in all major air battles fought by the 8th Air Force. Such targets as Schweinfurt, Regensburg, Munster, Brunswick, Hanover, Bremen, and Hamburg, brought terror to the crews at briefing, but none like Berlin.

Herman Goring had boasted to Hitler and the German people that no bombs would fall on Big B, in daylight. He had

not reckoned on the Square B, 95th Tail Marking. On March 4, 1944, the mighty 95th made the first daylight raid on Berlin. This was the first of 17 missions in which the 95th bombed Berlin.

The first mission was equated as equal to the significance of the first raid in Tokyo by General Doolittle.

The 95th has a motto, "Justice With Victory." During the conflict the Army dropped supplies, food, and ammunition to free French resistance forces. Food and medicine was also dropped to the citizens of Warsaw, Poland, and in Holland.

During the time of conflict, the 95th participated in shuttle missions from England, bombing in Germany, in and to North Africa. There were also several shuttle missions from England to Russia to Italy and back to England.

At Normandy on D-day, June 6, 1944, crews of the 95th flew three missions in support of the landing forces and participated in low-level support of ground troops efforts in the breakout from the beaches into France and Germany.

The men of the 95th Bomb Group served with valor and bravery. They are still supporting their country. They deserve the recognition of their service now, as they did in 1943–45.

May God bless these aging warriors and their sponsors as they gather in reunion and God bless the United States of America.

I ask that these men be recognized and honored at this time.

Mr. President, I ask unanimous consent that some information regarding the 95th Bomb Group Association be printed in the RECORD.

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

THE 95TH BOMB GROUP (H), 13TH COMBAT WING, 3RD AIR DIVISION, 8TH AIR FORCE, HORHAM, ENGLAND, STATION 119, WORLD WAR II

Of the 41 heavy bombardment groups stationed in England during WW II, the achievements and recognition of the 95th Bomb Group are unequaled. This outstanding group was known for its dedication to mission, its pride, comradery and leadership in combat.

Intensive training began at Geiger Field, Washington in October 1942 and continued at Rapid City AFB, South Dakota. On March 18, 1943, the Group's 41 B–17's and 399 crew members were ordered to the ETO. Flying from Florida through Brazil and Africa, the Group began operations at Alconbury, England on May 13, 1943. From this date until beyond the end of the war in victory, the 95th participated in every major campaign and air battle, earning honors of the highest order because of the undaunted courage of the air crews and the dedicated, faithful, professional service of the group support units.

In brief summary, the 95th Bomb Group (H):

Flew 321 combat missions; dropped 19,769 tons of bombs.

Flew (seven) 7 "Chowhound" missions—low-level food supply to the starving Dutch Nation.

Flew (four) 4 "Revival" repatriation missions—to return downed POW's and forced laborers from France, Belgium and Holland.

Flew a total of 8,625 credited sorties (plane missions).

Utilized a total of 359 B–17 Flying Fortresses in combat action; of this number 156 were lost in combat, 36 in other operations; 61 were force landed on the Continent.

Forty-two (42) were salvaged at home base beyond repair.

In total, 1,362 planes were repaired from major battle damage.

Consumed more than 35,000,000 gallons of gasoline.

The 95th Bomb Group (H):

Lost 569 men killed in action; 3 are still missing in action (assumed KIA).

Lost 825 crew members as Prisoners of War.

Had 171 crew members returned to base as severely wounded.

Lost 61 crew members interned in Switzerland and Sweden.

Had 61 crew members evade capture after being shot down behind enemy lines.

There were 63 men killed in non-combat accidents (KIS—killed in service).

Total casualties 1,774.

The 95th Bomb Group claimed 425 enemy aircraft destroyed, 117 probables, 231 damaged.

The 95th Group led the first daylight bombing mission to Berlin, March 4, 1944.

Was the only combat Group in the 8th Air Force to receive three (3) Presidential Distinguished Unit Citations—These were for leadership and valor on missions to Regensburg, August 17, 1943, Munster, October 10, 1943 and Berlin, March 4, 1944.

Group Commanders: Colonel Alfred A. Kessler—23 October, 1942 to 22 June, 1943; Colonel John K. Gerhart—22 June, 1943 to 28 April, 1944; Colonel Chester P. Gilger—29 April, 1944 to 9 May, 1944; Colonel Karl Truesdell, Jr.—10 May, 1944 to 14 December, 1944; Colonel Jack E. Shuck—15 December, 1944 to 27 April, 1945; and Lt. Colonel Robert H. Stuart—28 April, 1945 to June 1945.

Revised June 1990.

In June 1945, the 95th Bomb Group was returned to the USA to retrain for duty in the Pacific Theatre of Operations, and was deactivated at the end of WW II on August 28, 1945.

SQUADRONS

334th, 335th, 336th, and 412th.

MOTTO

JUSTICE WITH VICTORY

RELATED ATTACHED UNITS AAF STATION 119, HORHAM, SUFFOLK, ENGLAND

8th Station Compliment.
18th Weather Detachment.
49th Service Group.
64th Service Squadron.
215th Finance Office.
271st Medical Dispensary (AVN).
433d Hqtrs. and Base Service Squadron.
433d Air Service Group.
457th Sub-Depot.
683d Air Material Squadron.
859th Air Engineering Squadron.
879th Air Chemical Co. (AVN).
1029th Ordnance Co.
1676th Ordnance S&M Co. (AVN).
2022d Aviation Engineers Fire Fighting Platoon.

Mr. SPECTER. Mr. President, the issue of the B–2 bomber continues to be the most difficult vote for me on the Department of Defense authorization bill. With the significant change in the relationship between the United States and the U.S.S.R., the strategic requirements of the United States have changed dramatically.

In the gulf war, air power was extremely important, and it may well be that the B–2 is necessary for conventional war for the future.

After studying the issue in depth, conferring with experts on both sides, and considering the arguments of my Senate colleagues, it is my conclusion, at least for the time being, to defer to the judgment of National Security Advisor Brent Scowcroft, Secretary of the Air Force Donald Rice and his Air Force commanders who argue strenuously that the B–2 is absolutely necessary for national defense.

I am also influenced to vote for the B–2 in the pending authorization bill, because I will still have an opportunity for further consideration of the issue between now and the time the appropriations bill comes before the Senate. If the B–2 is not authorized, then we cannot have an appropriation for it. On the other hand, even with authorization, we will have an opportunity for future study and reflection on this issue before approving an appropriation for the B–2.

Mr. COATS. Mr. President, I rise to express my strong support for the B–2 bomber and the position taken by the Armed Services Committee regarding the B–2 in the Defense authorization bill. I hope my colleagues will join me in opposing any amendments to reduce funding for the B–2 program.

Mr. President, Operation Desert Storm, in my view, demonstrated the utility and effectiveness of stealth technology. The F–117, while constituting only 2.5 percent of the aircraft deployed in the Persian Gulf, covered 31 percent of the targets struck within the first 24 hours of combat. By being able to operate autonomously in highly defended airspace and strike high value targets, the F–117 saved lives and aircraft, and accelerated the success of our air campaign.

The B–2 bomber, of course, would be even more capable than the F–117, since its range and payload would allow it to attack targets without warning virtually anywhere in the world. The B–2's ability to operate autonomously at very long ranges would be a key asset for any future power projection mission, especially if we do not have 6 months to mobilize and construct a combat support structure.

Mr. President, this point cannot be overemphasized. While we will always have the option of conducting a large-scale deployment similar to Operation Desert Storm, it is unlikely that we will do this except in the most threatening situations. This type of power projection, therefore, is inadequate for dealing with the many types of threats that may arise. On the other hand, the B–2 will provide an autonomous capability to promptly hold targets at risk around the world. The Saddam Husseins of the world will never be able to assume that their aggression will go

unanswered. In a matter of hours, a B–2 fleet could bring virtually the same degree of firepower to bear that took 6 months to deploy in Operation Desert Shield/Desert Storm. Such force could be used in preparation for a larger operation including ground forces or as an autonomous operation. In either case, aggressors must assume that they will be confronted within hours of initiating conflict.

Mr. President, some have ridiculed the notion that the B–2 bomber would be used for conventional missions. In my view, one of the B–2's most important attributes is precisely its conventional power projection capability. For those who argue that we would never risk such an expensive plane for a conventional mission, I suggest they add up the cost of deploying alternative forces, such as a carrier battle group or existing land-based bomber forces. Each alternative requires tankers, air defense suppression and air escort in addition to the bombers themselves. When all this is added up, it turns out that a handful of B–2 bombers could perform the same mission that would normally require almost a hundred aircraft, with several hundred pilots at risk. In these terms, the B–2 seems to offer a highly cost-effective alternative. Thus, when we talk about the cost of the B–2, we really need to look at the mission effectiveness and the number of aircraft that will be put at risk. Judged by this standard, especially in relation to the number of lives placed at risk, the cost of the B–2 is placed in a far different perspective.

Mr. President, while I have focused on the conventional attributes of the B–2, we must not overlook the critical role the B–2 will play in enhancing strategic deterrence. As long as the Soviet Union or any other country possesses the capability to hold the United States at risk with nuclear weapons, we must seek to preserve deterrence in a stabilizing manner. The B–2 is the most effective means of fulfilling the bomber requirement that will continue within our strategic triad. Its ability to penetrate sophisticated air defenses makes the B–2 a highly capable and reliable retaliatory system.

It is also important to bear in mind that the START Treaty, which was signed just yesterday, is premised on the existence of the B–2. In fact, in resolving the very last items of disagreement with the Soviets, the United States traded important concessions in return for favorable treatment for the B–2. If we accept the Leahy-Cohen amendment to terminate the B–2 Program, we would effectively undermine a major rationale for the START Treaty. We would be forced to go back to the drawing board with START.

Mr. President, before I close let me comment briefly on the question of cost. There is no doubt that the B–2 is a costly system. However, canceling the program now would be a supreme waste of money. To date, over $33 billion has been sunk in the B–2 Program with $27 billion left to go. While this is admittedly a large sum, I submit that the price per aircraft if we cancel now will turn the B–2 into the most ridiculous and costly system in history. If we proceed in the near future with full-scale production, however, the B–2 Program will be a cost-effective program with a unit flyaway cost of approximately $437 million per copy. As a percentage of the Defense budget, this is comparable to the B–52 and less than the B–1.

Mr. President, if we learned anything from Operation Desert Storm it is that advanced technology makes all the difference. The war validated the importance and cost effectiveness of Stealth. It would be folly at this point for the Senate to reject this lesson and cancel the B–2. While the cost of this program is indeed high, I believe that the return on our investment will be tremendous. I urge my colleagues to support the B–2 and to vote against the Leahy-Cohen amendment to halt procurement.

B–2 BUNK

Mr. CRANSTON. Mr. President, I rise today as a cosponsor of the amendment to end further production of the B–2 bomber.

After 10 years of development in the shadows of the black budget, the Stealth bomber emerged into the harsh glare of public scrutiny. What many in Congress observed and continued to observe is not to our liking.

The B–2 is undertested, overpriced, and above all, overkill.

After investing more than $30 billion in the B–2 Program only three planes have been delivered—and they were behind schedule and incomplete. The cost of additional planes continues to soar.

CBO estimates that each B–2 plane will cost $865 million. By the time we finish building 75 B–2 bombers the cost per plane, including lifecycle costs, will be at least $1.4 billion. That works out to $850 a troy ounce of aircraft, or more than 2.3 times the price of gold! In this time of recession and unemployment and an already bloated budget deficit, we can hardly afford to build a bomber worth more than two times its weight in gold.

The cold war is over. The Warsaw Pact is a distant memory and the Soviet Union is clearly more focused on attracting foreign investment than in investing scarce resources in defense. Yet, reductions in our own defense spending have been selective to the point of wimpishness.

One area where we have moved forward to make cuts is in our basing structure. We have just been through the painful base closing process. Many of the bases to be closed have been a part of our Nation's history, serving admirably in our national defense. Communities which surround these bases, including many in California, could be impacted severely by base closings. Yet, most understand that as we cut defense spending, closing unnecessary bases makes sense.

What's more difficult to understand is our unwillingness to bite the bullet on pricey strategic programs.

In one fell swoop, by voting for this amendment and by ending production of the B–2 bomber, we can save more money than we would save over the next 20 years if we vote to proceed with this latest round of base closings!

The Base Realignment and Closure Commission estimates that annual savings from base closings will total $1.5 billion. I say to my colleagues who have bases closing in their States, many which will require millions of dollars to complete environmental cleanup: How can you vote to spend almost $5 billion in fiscal year 1992 alone and commit to spending at least $30 billion to finish a bunch of planes we do not need and cannot afford?

This year the Air Force spent more than $2 billion on B–2 procurement. Not a penny of that went toward procurement of additional aircraft. Instead, the funds went to pay for cost overruns on the program.

Yesterday's GAO report provides compelling evidence that there will be even more cost overruns over the very troubled life of the program.

The continued rush to production only exacerbates the situation. Last fall, there were reports in the Los Angeles Times about 850 Boeing employees temporarily brought from Seattle to work in Palmdale, CA, on the B–2 program. The cost of housing and transporting these workers was reported to be $10 million. When I contacted the Air Force about this strange way of doing business—surely there are qualified aerospace workers in the Los Angeles area—they said that Seattle workers were moving down with the unfinished aircraft to complete their portion of the work "because of schedule disruptions brought about by transitioning from development to production."

The B–2 program makes a mockery of the concept of "fly before buy." This axiom, which has become firmly ingrained in our defense procurement practices, dictates that we hold off on buying aircraft until we are certain they can actually fly. "Fly before you buy" seems to drive our procurement policy on everything, everything, that is, except the B–2.

It is no surprise that the B–2 has undergone only a preliminary set of flight tests. According to the GAO, less than 5 percent of the testing on the B–2 has been completed. None of that testing has taken place in a representative operational environment. Full operational testing is not slated to begin before 1992 and the B–2 initial operational test program will not be com-

pleted until 1996. Nonetheless, should this amendment fail, more than 25 percent of the planes the Air Force claims it needs will be in various stages of production long before testing has been completed.

When B–2 supporters claim that the B–2 is the most tested aircraft in history, they neglect to mention a key point. Most of this testing took place before the plane ever got off the ground.

Supporters of the B–2 have attempted to convince and reassure us by noting that a single B–2 can do the job of dozens of planes, tankers, escorts, suppression and surveillance aircraft, and other bombers. I find this deeply troubling. I doubt we would consider sending one of these gold-plated aircraft into many combat situations and I shudder to think about the day the first B–2 crashes.

Mark my words, we won't be flying this plane—we'll have it under lock and key. And Gen. John Chain, the commander in chief of the Strategic Air Command, made that abundantly clear in testimony before the House Armed Services Committee last year, when he said:

I cannot see putting very many [B–2s] at risk during a conventional conflict if they were going to be exposed to high threat, dense type of activity in a small geographic area.

Of course, there are some who believe that the B–2 is already fully operational. If you listen to some of the rhetoric on the B–2 program, you would think that the B–2 saved the day in the Persian Gulf. Well, let me say to B–2 proponents, the B–2 is no F–117 Stealth fighter.

The F–117A is a conventional fighter-bomber without the controversial new radar features of the B–2. The B–2 is not configured for a conventional role, nor does it have the same precision capabilities as the F–117. Other than the yet untested low observable capability, the B–2 can only conduct the same imprecise carpet bombing we expect from a B–52.

Touting the role of the F–117 in the Persian Gulf is not a rationale for the B–2. This tactic didn't work when the F–117 was used in Panama and it won't work now.

At $42.6 million a pop, the fully operational F–117 gives us more bang for the buck. Especially since the bucks have been spent. The F–117 is already paid for.

But, this is not a debate about the merits of proceeding with development of Stealth technology, because this amendment does not eliminate funds for continued research and development. We saw the marvels of Stealth technology—technology developed by the highly skilled workers in my State of California—in the F–117's performance in the Persian Gulf.

To those who question why the senior Senator from California would stand up to challenge a program which brings thousands of jobs to his State, let me say what I said 2 years ago when I began the fight to terminate this wasteful program: The Defense budget is not a jobs program.

I have always believed it wrong, indeed a disservice to our Nation to promote blindly a home-based project that did not enhance our security in a cost-effective manner. We are carelessly squandering our national treasure, at the expense of programs which meet our real security needs—housing, health, education, transportation, and the environment. Dollars spent on needless weapons systems are dollars that could be spent more wisely on a vast array of programs to bring jobs to our States.

Finally, Mr. President, let me comment on the momentous signing of the START Treaty, the first major strategic arms treaty in history. This tremendous step forward provides us with the perfect opportunity to hold off on further production of strategic systems like the B–2.

Instead, we are being told that the START treaty is a rationale for buying more B–2s. The notion that we must proceed with the B–2 to take advantage of the bomber counting rule in START flies in the face of what arms control is all about. We are not signing the START Treaty to escalate the strategic arms race.

Our B–52s will be with us well into the next century, according to the Air Force's own analysis, and the B–1 will be able to penetrate Soviet defenses for at least another decade. The B–2 has been in search of mission since its inception.

Mr. President, yesterday's signing of the START agreement underscores the folly of pursuing the B–2 Program. This billion-dollar boondoggle has become increasingly irrelevant in a time when sweeping arms control agreements are becoming the norm. Let's inject a dose of reality in our Defense budgeting. Let's stop buying more B–2s.

Mr. DIXON. Mr. President, I want to thank my distinguished colleague from Michigan, Senator LEVIN, for introducing an amendment for me last night commending the outstanding performance of American men and women in the defense industry of this country. I have been in the Banking Committee's markup for the last 2 days, and I very much appreciate Senator LEVIN's assistance in my absence.

As a member of the Senate Armed Services Committee since 1984, I have supported many of the systems used during Operation Desert Storm—a successful military operation without parallel in the history of warfare. Although Americans readily associate defense production with large corporations such as McDonnell Douglas and General Dynamics, our defense industry is also made up of thousands of small- and medium-sized companies throughout this great country, down to and even including Belleville Shoe Co. located in my hometown of Belleville, IL.

I believe that the men and women who work for these companies deserve the gratitude and appreciation of the Members of this Senate and the citizens of this country as a whole, for the design and production of our technologically advanced weapons and weapon systems, as well as for the food, clothing, and other supplies used by all of our troops.

Mr. President, during Operation Desert Storm, the American people saw on television how well our weapon systems performed. Prior to this event, many of these systems were under attack, including systems such as the Apache helicopter, The M1–A1 Abrams tank, the Bradley fighting vehicle, the F–16, the F–15, the Tomahawk missile, and yes, even a system still undergoing development, the joint surveillance and target attack radar system [JSTARS]. Critics said some of these systems would never be able to operate effectively. Well, those forecasters were dead wrong. Our systems worked in the most realistic, comprehensive operational test ever devised—actual combat.

This amendment which we passed last night emphasizes that the United States must maintain our defense industry to ensure that it is always capable of responding to the national security requirements of the United States in whatever circumstance. Many of my colleagues and I have been concerned over the fate of our defense industrial base. We have been amazed at the number of experts whose shortsightedness leads them to ignore totally the full and significant gravity of the "I.P." word—meaning a strong industrial policy—thus allowing our industrial base to deteriorate to an alarming level. Together with our late dear friend and distinguished colleague, Senator John Heinz, I urged these experts during the consideration of the Defense Production Act last year and again this year, to take action. But the decision makers, led by some misguided economists, resisted our efforts and continue to do so.

A few months ago, an article by Stuart Auerbach appeared in the Washington Post entitled "U.S. Relied on Foreign-Made Parts for Weapons." This greatly disconcerting article said, and I quote,

* * * Foreign manufacturers often were reluctant to put the Pentagon's purchase orders ahead of their regular customers without prompting from their governments * * *

Mr. Auerbach goes on to quote a senior administration official as saying,

If the foreign governments were neutral or were not disposed to help us out, we could have run into some real problems * * * We were sweating bullets over it and the military was sweating bullets.

As the crisis intensified, we Americans discovered we were dependent on one country for semiconductor chips, transistors, and other electronic parts. We had to go to that country's embassy for help, knowing that theirs is a country where support for military procurement runs contrary to the general philosophy of pacifism.

The "1991 Joint Military Net Assessment," prepared by the Chairman of the Joint Chiefs of Staff, contains further alarming information on the U.S. technological and industrial base. This report should be read by all Members because, Mr. President, this report says in black and white what the late Senator Heinz, other Members of this body, and I have been saying all along: We are facing—

The loss of subtier suppliers—manufacturers of subsystem components of larger systems—[this] is a threat to our ability to field state-of-the-art weapon systems on a timely basis. * * *

The report further states,

At the same time, production capability in such essential subtier industries as machine tools, gears, optics, bearings, castings, and forgings has declined, in some cases to the point where sufficient domestic capacity may no longer exist.

This analysis comfirms what many of us in Congress have said for years—our defense industry is becoming too dependent on foreign sources.

Mr. President, I wish to thank all my colleagues who supported this amendment on behalf of the men and women who work for our defense industry, but in particular, I am grateful to my 17 colleagues who cosponsored the amendment, Senators AKAKA, BOND, BOREN, D'AMATO, FORD, GLENN, GORE, GRAMM, HOLLINGS, INOUYE, JOHNSTON, LIEBERMAN, MCCAIN, MURKOWSKI, SHELBY, THURMOND, and WARNER. Their support helps to ensure that the U.S. defense industrial base remains second to none.

Mr. President, I ask unanimous consent that the amendment be printed in the CONGRESSIONAL RECORD, following my statement.

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

On page 297, between lines 18 and 19, insert the following new section:

**SEC. 1125. SENSE OF CONGRESS RELATING TO THE CONTRIBUTIONS TO OPERATION DESERT STORM MADE BY THE DEFENSE-RELATED INDUSTRIES OF THE UNITED STATES.**

(a) FINDINGS.—Congress finds the following:

(1) The success of the Armed Forces of the United States in the prosecution of Operation Desert Storm is without parallel in the history of warfare.

(2) This success was due in great measure to the ready availability of weapons and weapon systems exhibiting remarkable accuracy through advanced technological design.

(3) These weapons and weapon systems were designed and produced by the defense-related industries of the United States.

(4) The Commander in Chief, United States Central Command, formulated a battle plan for Operation Desert Storm that relied on the availability and performance of these weapons and weapon systems.

(5) The successful use of these weapons and weapon systems in accordance with this plan resulted in astonishingly small numbers of killed and wounded among the Armed Forces of the United States and of the allied coalition.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the defense-related industries of the United States, and the men and women who work for such industries, deserve the gratitude and appreciation of the Congress and of the United States for the design and production of the technologically-advanced weapons and weapon systems that ensured victory by the United States and its international coalition allies in Operation Desert Storm;

(2) future decisions relating to the national security of the United States must take into account the need to maintain strong defense-related industries in the United States; and

(3) it is vitally important to the United States that the defense-related industries of the United States be capable of responding to the national security requirements of the United States.

In section 2(b), the table of contents, insert after the item relating to section 1124 the following new item:

Sec. 1125. Sense of Congress relating to the contributions to Operation Desert Storm made by the defense-related industries of the United States.

Mr. ADAMS. Mr. President, I rise today in support of the Cohen-Leahy amendment. As I see it, today's discussion about the B–2 Stealth bomber revolves around two critical issues.

The first and most important issue is the aircraft's mission. In the context of the earlier discussion about SDI, we heard from both sides of the aisle about the reduced threat posed by the Soviet Union. As a result of that reduced threat, the committee that drafted this bill decided to fundamentally reconfigure SDI. The new system, according to its proponents, would protect against a limited strike from a breakaway Soviet republic or from one of the several Third World country's currently developing nuclear technology. Implicit in this change is the fact that the threat of an all—out intercontinental—ballistic missile attack by the Soviet Union is extremely remote or nonexistent.

The B–2 was conceived as a long-range penetrating aircraft that could counter a Soviet first strike, particularly a strike that could wipe out our second strike threat. Well, given the fact that the Soviet's no longer pose a credible first—strike threat, I would ask my colleagues, is the B–2 an aircraft without a mission? Should we not, at the very least, address this question before we go ahead with the Air Force's plan to buy 75 of these planes at a total cost of $65 billion dollars?

The Cohen-Leahy amendment offers an excellent opportunity to assess these issues before we go ahead with the B–2 program. By halting production at the 15 planes already authorized, we can allow the Air Force to continue research and development on this new, and still unproven, technology. Furthermore, we can do so without committing ourselves to the production of a cold-war weapon which may have no real role in what President Bush so frequently refers to as the "new world order."

As a result of this change in the world situation, the Air Force has begun to extol the conventional capabilities of the B–2 and its potential usefulness in a regional conflict. This may or may not be true. But what is true is that we do not have any idea how much more it would cost to reconfigure these planes to accommodate the conventional "smart" weapons that proved so effective in the war with Iraq. Even more importantly, we have spent billions of dollars over the last decade on the B–1B, a plane the Air Force insists is the "finest long-range bomber in the world." The payload capacities of the B–1B are equal to or better than the capacities of the B–2, and the B–1B was designed and built to accommodate conventional weapons.

The Air Force counters these arguments by saying that modern warfare demands stealth technology. I would ask my colleagues, however, did we not demonstrate the efficiency and complete suffiency of our stealth arsenal with the F–117 in the Persian Gulf? These bombers could lead a U.S. bomber strike anywhere in the world and, with precision bombing of enemy radar sites, could be followed by conventionally armed B–1B's that would not require stealth characteristics. Put simply, we have an excellent conventional bomber which fulfills the role currently being advocated for the B–2, and fills it without burdening American taxpayers with an additional $30 billion expenditure.

This discussion of the B–1B brings me to the second essential point in our consideration of the B–2. With similar grave warnings about cost overruns if we delayed funding the B–1B program, the Air Force urged Congress to build 100 B–1B's before they were thoroughly tested. Well, Congress acquiesced in that demand. As a result, we had some of the worst cost overruns in weapons procurement history, and some of the mechanical problems with the plane are still being worked out today.

More importantly, since that time the Air Force has, at the urgings of Congress, adopted a policy known as "fly before you buy." This self-explanatory policy should be the cornerstone of any program as costly as the B–2. We have already experienced cost overruns in the B–2 program that have driven the cost-per-plane up to nearly $900 million dollars. The current $64.7 billion estimate for total cost is only a floor, and even the Air Force projects further mechanical and technical com-

plications. Only 5 percent of B–2 flight test results are in, and manufacturing problems have delayed further testing. The planes avionics, arguably its most important component, have yet to be tested in an operational plane.

Given these facts, I am not prepared to commit myself, nor more importantly the budget of the U.S. Government, to full production of the B–2 at this time; $30.8 billion dollars have already been spent on the bomber, and we have very little to show for that incredible investment. Regardless of the ultimate fate of the B–2, I would urge my colleagues to support the Cohen-Leahy amendment and halt production at the 15 planes already authorized. We must know that the plane has a mission, and we must know that the plane will work, before we embark on this costly endeavor. Let's not make the same mistake twice, for our own integrity and for the confidence of our country.

With our anticipated budget deficit next year of nearly $350 billion, we should not make a major commitment to additional procurement of an invisible bomber with no visible mission. Let's fly before we buy.

Mr. CHAFEE. Mr. President, I would like to comment on the Leahy/Cohen amendment to the Defense authorization bill for fiscal years 1992 and 1993 which would terminate production of the B–2 bomber at the present authorized level of 15 aircraft.

Clearly this amendment presents the Senate with a very difficult choice. On the one hand the B–2 offers the Air Force the ability to perform strategic and conventional missions that heretofore have been impossible, while at the same time it reduces the number of U.S. personnel who would be subject to the dangers of combat. Further, the United States has already invested an enormous amount of money in the development of this aircraft.

On the other hand we have tremendous needs at home in health care, education, housing, and other programs. It is therefore not surprising that this amendment has been the subject of so much concern among our constituents.

I am a strong supporter of the strategic triad concept on which the United States has relied for many years. Under this concept, we have strong strategic deterrent forces capable of delivering weapons by air, land, and sea. This formula has led to the confidence that if one or even two legs of the triad were destroyed, we would retain a final hedge against aggression. In the final analysis, America has been made a safer place because our enemies have known that they could not attack us without expecting massive retaliation.

While it is true that the cold war is over, the Soviet Union retains the capability to destroy the United States. None of us was able to predict the profound changes that have recently occurred in Eastern Europe and the Soviet Union and none of us can confidently predict what will occur in the future. In any event, the President has already taken into account the changing circumstances in the world by reducing the number of B–2 aircraft requested by almost half.

There is a distinct possibility that the Soviet Union could be overcome by civil war, anarchy, or military coup which could again raise tensions between our two countries. In fact, many senior Soviet officials have publicly acknowledged these dangers. President Gorbachev himself has stated: "If we—the Soviet Union—start to split up, then—I tell you bluntly—we will end up with such a civil war, such a bloody carnage, that we will not extricate ourselves from it all together. Everyone must understand this and be on the alert." Therefore, maintaining the strategic triad is a worthwhile endeavor.

Advances in Soviet air defenses have rendered the B–52 force—which has been in service for close to 30 years—and the B–1B force—which has never lived up to its potential—obsolete as penetrating bombers. I believe the stealth technology of the B–2 is needed to preserve the strategic triad.

It is my firm belief that the B–2, as a penetrating bomber, is a stabilizing weapon. Because it flies relatively slowly, it can be recalled after it has been sent. The intervening hours between launch and arrival at its target provide decisionmakers with the opportunity to resolve a dispute peacefully. As such, bombers are not considered to be first-strike weapons—weapons which are the most destabilizing and can be used for a preemptive attack. This characteristic is one reason why our strategic arms reductions talks [START] negotiators placed such a strong emphasis on bombers over the more destabilizing land-based and submarine-launched intercontinental ballistic missiles. In fact, it was the expectation that the B–2 would be built that led the Joint Chiefs of Staff to conclude that a START Treaty was in America's best interest.

My desire to maintain strategic deterrence by building the B–2 also leads me to oppose efforts to deploy any anti-ballistic-missile—or ABM-defense system that could jeopardize the ABM Treaty with the Soviet Union. I opposed the Senate Armed Services Committee provisions on the strategic defense initiative—or SDI. The committee's recommendations on SDI would lead, I believe inalterably, to the deployment of multiple land-based interceptor sites. It also clearly envisions the deployment of space-based systems. Both of these developments would require the abrogation of the ABM Treaty. This treaty has been one of the most stabilizing influences in United States-Soviet relations in the past 20 years. It has prevented a costly and wasteful arms race in space. More importantly, it has kept in place the incentive to work together and to increase the level of trust between our two countries. Building defenses implies that we need not be concerned about negotiations or discussions with the Soviets on reducing tensions. It also pushes the Soviet Union to build defenses of its own, thus totally undermining the deterrence of both sides.

Even if SDI could eventually be developed as an effective defense against ballistic missiles—which I believe is in doubt—it would still be destabilizing. SDI could potentially convince the Soviets to abandon U.S.-U.S.S.R. our strategic weapons limitation treaties and build additional weapons in order to overwhelm a defensive system.

Strategic deterrence against the Soviet Union is just one reason for building the B–2. The emerging, and perhaps even more important reason for such a decision, is the need to have the capacity to undertake conventional attacks on targets in future regional conflicts. Just about 1 year ago to the day, Saddam Hussein launched his brutal invasion of Kuwait. This action caught the entire world by surprise. That the United States and its coalition partners had to go to war with Iraq to expel its army from Kuwait was even more unexpected.

Why would the B–2 be preferable as a conventional weapon delivery system to the various forces we have available today? To embark on the same mission as two B–2's, a force of 75 bomb-droppers, fighter escorts, electronic countermeasure planes, and tankers would be needed, using conventional dumb bombs. For an attack with precision bombs, a fleet of 55 aircraft would be needed. The aircrew at risk under these various scenarios would be 4, 132, and 116, respectively. Perhaps even more important are the differences in the numbers of forward-based personnel that would be needed to support the mission.

Assuming that permission to use facilities in forward areas could be obtained, the dumb-bomb mission would need 1,331 forward-based crew, the precision bombing mission would need 1,124, while the B–2 would not need any forward-based crew because of its long range, the B–2 could be permanently based in the United States or existing American bases around the world. Besides the significant difference in fuel costs, the nonstealth options would also have a much higher lifetime maintenance cost: $4.2 billion for dumb bombs air package, $3.4 billion for precision bombs air package, and $308 million for the B–2's.

The performance of the F117A Stealth fighter in the war with Iraq proved the utility of a stealth conventional attack plane. The F117A made

up only 2½ percent of the coalition's aircraft in the conflict but was assigned to 31 percent of the targets. Some have also argued that with this success, the F117A could fill the role of the B–2. The F117A however can be used only in clear weather, can only carry two 2,000 pound bombs, and has limited combat radius of about 600 miles. The B–2 will have an all weather capability, be able to carry up to 16 smart bombs, and has an unrefueled range of 6,000 miles. As in the case of the other bombing missions, the F117A would need forward bases near the battlefield.

Another reason for my decision to support continued production of the B–2 is the desire to protect the tremendous investment that we have already made in this new technology. Nearly $20 billion has been spent to date on research and development. The factories have been built and the tooling purchased. It would be unfortunate if we were to turn back at this point and lose our sizable investment. Opponents of the B–2 have argued that each B–2 would cost close to $1 billion. This is deceptive because it divides the research and development costs into the number of planes that are built. The actual cost to build the remaining 60 B–2's that are needed is $351 million each.

Although this is still an enormous amount of money, I believe that the importance of nuclear deterrence and improved conventional capabilities justifies the cost.

Mr. JEFFORDS. Mr. President, a year ago, I argued that this body should accept the amendment offered by my colleague from Maine, Mr. COHEN, and forego additional funding for the B–2 until such time as the program had fulfilled its performance targets and the international situation had become clearer. There were sufficient funds already appropriated to the B–2 so that production could continue at an acceptable rate without providing any new moneys.

Since that day, the Warsaw Pack has dissolved its military alliance, the newly freed nations of Eastern Europe are seeking observer status in NATO and the United States and U.S.S.R. have signed the Conventional Forces in Europe Treaty and the START Treaty. While there will be setbacks in the march toward democracy, I doubt that Eastern Europe will ever return to monolithic communism nor is the Warsaw Pact likely to be reconstituted. And a united Germany will probably encompass the former face-off line between East and West for some time to come.

Since last year's vote, bomber production has moved forward, with fits and starts. The General Accounting Office recently expressed its concern that the current procurement schedule for the B–2 indicates that the Air Force may acquire more than two-thirds of the bombers before there is a reasonable assurance through operational tests that the B–2 can accomplish its expected mission. We know from bitter experience with the B–1B bomber that rushing forward with production before most of the flight testing is done is just asking for trouble. Out of the B–1B fiasco came the fly-before-you-buy policy, which is now being brushed aside in the rush to build more B–2's. Even the Armed Services Committee felt compelled to require that increased production be withheld until a series of critical tests are completed next year.

As I stated last year, the time to make a final judgment on the B–2 would come when the international situation was more stabilized and the B–2 program's progress could be better assessed. That time has come. I am now convinced that international trends are proceeding away from superpower conflict and that our defense needs have changed. We should be brave enough to seize the opportunity this new world presents and reorient our defense planning. Senator LEAHY and Senator COHEN's amendment does just that.

The Leahy-Cohen amendment allows the production of B–2's already authorized to be completed. And there are valid agruments for building these 15 planes. While the likelihood of a superpower conflict has faded, the chance of a Third World hot-spot flaring up into a war requiring U.S. involvement obviously remains very real. The B–2 bomber, equipped with conventional weapons, has the advantage of being able to penetrate sophisticated air defenses undetected, delivering a large payload upon multiple targets. The long range of the B–2 allows it to be based far away from areas of conflict and to respond immediately, eliminating the long-lead time that we found was required to get our forces in place to defend Saudi Arabia. While I hope that such capabilities will not be needed, it is prudent that we be prepared for them. Fifteen B–2's should be sufficient to perform such missions should they arise.

We've invested a lot of money in the B–2 and its breakthrough stealth technology. The Leahy-Cohen amendment allows us to reap the benefits of that investment, and add the advantages of this technology to our arsenal. But it also allows the American people to cash in on the years of heavy investment in defense by finally scaling back our stockpiles of military hardware. Fifteen B–2 bombers are necessary and 15 B–2's are enough. I urge all my colleagues to support the Leahy-Cohen amendment.

The PRESIDING OFFICER. All time has been yielded. The question is on agreeing to the amendment (No. 1017) of the Senator from Vermont [Mr. LEAHY]. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

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

The result was announced—yeas 42, nays 57, as follows:

[Rollcall Vote No. 174 Leg.]

YEAS—42

| | | |
|---|---|---|
| Adams | Harkin | Mitchell |
| Baucus | Hatfield | Moynihan |
| Biden | Hollings | Packwood |
| Bradley | Jeffords | Pell |
| Bumpers | Kennedy | Reid |
| Burdick | Kerrey | Riegle |
| Cohen | Kerry | Rockefeller |
| Conrad | Kohl | Roth |
| Cranston | Lautenberg | Sarbanes |
| Daschle | Leahy | Sasser |
| DeConcini | Lieberman | Simon |
| Glenn | McCain | Wellstone |
| Graham | Metzenbaum | Wirth |
| Grassley | Mikulski | Wofford |

NAYS—57

| | | |
|---|---|---|
| Akaka | Domenici | Mack |
| Bentsen | Durenberger | McConnell |
| Bingaman | Exon | Murkowski |
| Bond | Ford | Nickles |
| Boren | Fowler | Nunn |
| Breaux | Garn | Pressler |
| Brown | Gore | Robb |
| Bryan | Gorton | Rudman |
| Burns | Gramm | Sanford |
| Byrd | Hatch | Seymour |
| Chafee | Heflin | Shelby |
| Coats | Helms | Simpson |
| Cochran | Inouye | Smith |
| Craig | Johnston | Specter |
| D'Amato | Kassebaum | Stevens |
| Danforth | Kasten | Symms |
| Dixon | Levin | Thurmond |
| Dodd | Lott | Wallop |
| Dole | Lugar | Warner |

NOT VOTING—1

Pryor

So, the amendment (No. 1017) was rejected.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be a period for morning business.

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

## A TRIBUTE TO MR. LELAND BANDY

Mr. THURMOND. Mr. President, I rise today to offer warm congratulations to the dean of the South Carolina press delegation, Mr. Leland "Lee" Bandy, on the occasion of his 30th anniversary as a correspondent here on Capitol Hill. As one of the few people who still have seniority over him, I can say with authority that he has had a long and distinguished career covering the Congress.

Lee has seen a great deal of history firsthand during his years in Washington. As the Washington correspondent for The State newspaper in Columbia—and that is the greatest paper in our State incidentally—he has contributed to that history by reporting the facts to the people of South Carolina. Mr. Bandy is an ethical journalist and a fine writer, and I wish him much success as he continues to bring the news to the people of our State.

## I WILL ALWAYS REMEMBER THAT MONDAY NIGHT

Mr. BUMPERS. Mr. President, several weeks ago our beloved colleague and friend, Senator PRYOR, suffered a life-threatening heart attack. We are all pleased that he is recovering and will return to his duties in the Senate after the August recess.

Senator PRYOR has written an account of the traumatic night of his attack and his recovery while in George Washington Hospital and in Arkansas. It was originally published in Arkansas Times magazine and reprinted in today's Roll Call newspaper.

I strongly urge all of my colleagues to read this article. It is moving and fascinating, but more important, it should be a warning to all of us to not lose sight of the things that should really matter to us. DAVID has shared a very personal experience, and we can all benefit from reading it.

There is no one in this body more loved and esteemed than DAVID PRYOR, and I know all my colleagues join me in wishing him a full and speedy recovery.

Mr. President, I ask unanimous consent that the article from Arkansas Times magazine be reprinted in its entirety.

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

I will always remember that Monday night—not as the night I almost died, but the night that, for some reason, my life was spared. Unlike many others, I was given another chance.

Heart attacks were for someone else to have, not me. I had a total disinterest in the subject; I didn't have time for a heart attack. Besides, after each physical, I skipped out of the doctor's office as the man who kept defying his age and lifestyle—great blood pressure, a swimmer's heart rate, and strong lungs.

Yes, all of this in spite of greasy cheeseburgers, French fries, 17 tons of salt, and many more than that "occasional smoke," Add in the 56 years multiplied by tension, stress, airplanes, and schedules, and even a dolt should have known that David Pryor was a prime candidate for the mother of all heart attacks.

I would sit in the Senate dining room in amused silence as my colleagues compared their cholesterol numbers. I didn't even know mine, nor was I curious. Heart attacks were for others, not me.

It was Monday, April 15—a light day at the office. The Senate was not in session, none of my committees was meeting. It was a good day to catch up, clean off my desk, make sure everthing was mailed to the IRS, meet with the staff, and be briefed for the Tuesday schedule. The Arkansas Homebuilders Association would be in town. The Harrison ninth-grade class was scheduled to be on the Capitol steps for a photograph. Dr. George Haas from Little Rock was coming up to discuss optometry issues. The Finance Committee would meet at 10. The weekly luncheon with members of the Senate Democratic Conference was on the schedule. Tomorrow would be busy and long.

I was home by 7 p.m., put on comfortable clothes, and watched the news. By 8 o'clock, I was walking up Connecticut Avenue headed to a favorite neighborhood eatery.

I wolfed down a big plate of spaghetti and meatballs, skimmed a folder on the Finance Committee hearings for Tuesday, read the current issue of Golf Digest, and was home in bed by 10:30. Barbara was in Thailand with a group of Senate wives and my house was a tomb of silence. I downed by cherry-flavored Rolaids, turned off the TV, and went to sleep wondering how Dick Darman, the president's budget director, would answer my questions about the exploding cost of prescription drugs.

Little did I know that within three hours, my life would change.

The next time I saw the sun, its rays seeped through the small window into my room in the cardiac unit of George Washington University Hospital.

I now found myself in a strange place, surrounded by people in white coats I had never seen before—my forearms were blue-black, bruised from needles and trauma. My veins were punctured and ravaged. Above my bed to the right was a stand holding a bag of glucose dripping into my vein. To my left, a heart monitor was being hooked up to electrodes struck to my chest.

A woman doctor sat on my bed, saying nothing, squinting across my body to the screen that showed the image of my heart via ultra-sound. In the corner were nameless people speaking in hushed tones about "prepping" me for tests downstairs. An orderly was clasping; a plastic ID band on my left wrist. Equipment, wires, cords, monitors, graphs, and electronic technology consumed the small room.

Had I been run over during the night? Had I jumped from the Washington Monument? It had been a hard, hard night of pain and fear.

I kept thinking that the phrase "rode hard and put up wet" described me at that moment. A barely audible knock on my door. The face of an ancient little lady, a hospital volunteer, appeared and asked, "Would you like your TV hooked up? It's only $3.75 a day."

It's a little eerie what goes through the human mind at these times. I kept remembering our family pew at the old Presbyterian Church in Camden. I was 14 and Jac Ruffin was our minister. He had been educated in Scotland and spoke with an elegant brogue, flawless diction and elocution:

"This is the age of the half-read page/The mad dash, the quick hash/The short hop and the brief stop/Until the spring snaps and the fun's done."

I didn't even have a comb, much less a toothbrush. Could someone get me some coffee? Well, OK, what about a glass of water? What happens when I need to go to the bathroom? Had they reached Barbara yet? How is she ever going to get from Thailand to Washington? What about my middle son, Mark—did someone call him? Oh, Lord, in a few minutes, those 60 Harrison ninth-graders will be on the Capitol steps. Did I lock the house last night? Where are my shoes? Did I bring a billfold? Oh, please, God, I pray I have insurance for all this.

It was morning and I had made it. What a night it had been.

"Good morning, Senator Pryor. I'm Dr. Varghese of the cardiac department. Let me introduce my colleagues, Drs. Herzog and Reimer. We will be your team during your stay at George Washington. You've had a heart attack. Could you sign this form? We need to take you downstairs to the Cath Lab. We will insert a catheter in your groin, push it up, and take a better look at your heart. You will be conscious during the whole procedure."

The room downstairs for the catheter procedure was vast. I remember its being very cold and during the procedure asking for extra blankets. Two nurses, two doctors, and me. All of us were flued to a huge TV-type screen watching the small wire-like apparatus move into the heart zone. It was hard to imagine this was my heart and my body being invaded by the catheter.

In almost an unknown tongue, the doctors interpreted to each other what they were seeing. It was like watching CNN back in January to see the previous day's battle damage assessments in the Persian Gulf.

Within an hour, I was being rolled back upstairs. The small waiting room was now filled to capacity. Staff. Old friends.

Waiting in my room were Dale Bumpers and Mary Hope Davis, his administrative assistant. Dale canceled his entire schedule for the day and never left the hospital. He stayed with me. He was a great source of strength for all of us, but especially for me. At one time, I had to demand that he leave my room, as he kept telling a litany of absurd stories and it hurt to laugh. The one that finally got me was about a poor fellow with no ears trying to get a job. I can't remember the punch line.

The flowers started coming. Telegrams. Did we want a phone hooked up in the room? President Bush called while I was in the Cath Lab. He'll call back in an hour when he finishes a speech. Where do we put all these baskets of fruit? "CNN just carried a big story about your attack," said a nurse passing by.

It was all unreal. It was a dream. This wasn't me. Beryl and Sheila Anthony. Ray and Betty Thornton. Bill Alexander—they all came and left, but I know they were there. John Paul Hammerschmidt called twice. I knew they cared. Dr. Halverson, the Senate chaplain, came to my bedside that day and every day I was hospitalized.

Somebody in my office told me one day about a Sense of the Senate resolution sponsored by Dale Bumpers the night before. It stated that the Senate hoped David Pryor would get well and make an early return to the floor. My staffer joked that it had only passed by a 51-to-49 vote.

One morning as I woke up a Senate colleague was sitting only inches from my face. When he saw that I was awake he lit up and said, "For years now, my daughter has begged me to take her fishing. I've always put her off. I don't know the first thing about fishing. But when I heard what had happened to you, I called her up and said, 'Let's go—today.'"

My mind tried to reconstruct the night before. I had jolted upward in bed and looked at the clock—1:45 a.m. I was lying in a pool of perspiration, soaked from head to toe. My upper chest did not feel sharp pain, but something better described as massive discomfort. Could it be indigestion? Did I really eat a live porcupine?

Within minutes of lying in that totally dark room trying to decide the next move, the intensity of pain increased. I've got to stand up. I'm getting light-headed. I grabbed a pair of red warm-ups from the chair. I fumbled for a golf shirt and started downstairs.

As I reached the bottom step, I knew. Rolaids and fresh air wouldn't help. I knew I was having a heart attack. Me, of all people. Alone. By myself.

Walking into the den, I reached for the phone and punched "9-1-1," remembering the recent horror stories in The Washington Post about ambulances arriving too late with crews not knowing what to do.

"My name is David Pryor. I live at 1615 19th Street. I'm having a heart attack and I need help. Please hurry."

I walked out the front door to wait. I sat down on the curb between two cars. What happens if the ambulance driver doesn't see me and drives right by the house? My chest tightened. My rib cage became a vise I was losing consciousness. I stood up and spotted a white '72 or '73 Ford—one of those that had a long, white hood. This one looked like a white aircraft carrier in the dead of night. I climbed up on that hood and laid down. I remember it was wet and the cool dew of the April night felt good to a body being wracked with pain.

I don't remember that an ambulance and a firetruck came, but I do remember being helped onto a stretcher. Inside, the ambulance had very bright lights; its siren sounded as if it were far off in the distance as we raced against time to the hospital.

My face was immediately covered with an oxygen mask and the woman attendant inside asked me, "From one to 10, how much pain are you having?"

I held up 10 fingers.

I have no recollection of arriving at the emergency room, but I have a most vivid memory of eventually looking up into a dozen unknown faces who had assumed total control of my body and being. They were all too young.

"Breathe-breathe-breathe," chanted the ER team.

"Give him more oxygen."

"Are you allergic to any drugs? What about morphine?"

"Are you really a senator? What state are you from?"

"How do we reach your wife—what about your staff?"

In the background, someone said, "We've got to find the next of kin."

"You've had a heart attack, Senator. We're trying to get you stabilized."

People everywhere. Chaos. For over two hours I was in and out of a subliminal state.

"Am I going to make it?"

"You're doing better. You're doing better."

"Senator, President Reagan was on this same bed 10 years ago. Mr. Brady was right next to him beyond that curtain," said a young doctor who probably was in high school when Ronald Reagan was shot.

At one point, I had a strange sensation I'll never forget. I felt like an automobile tire being blown up to the point of bursting. I knew I was going to explode. Am I dying? Or have I died? Is this what death is all about? Don't I have some say in all of this? Things were moving too fast for me to follow. I couldn't comprehend it.

The clock on the emergency room wall now said 4:30. For nearly three hours I had been flat on my back—jabbed, hit, shocked, monitored, and gouged. In the outer room, I could now see Don Harrell and Leslie Chalmers from the staff, Bob Bean from the staff of the Senate Sergeant at Arms, and my sons David Jr. and Scott had just come in.

Things were going better—I could sense it. I was going to be all right.

An hour later, the ER doctor said, "We're getting ready to move you upstairs to the cardiac unit. Do what they tell you."

Soon, as I was being rolled past my sons and staff, I looked at Don Harrell and said, "Don, I've had a heart attack. Let's don't tell anyone. Keep it off the record." Fortunately, he had the good sense to ignore that request.

Six nights after my attack, I had done well in recovery and progress was promising. Barbara had returned on Wednesday and now our three sons were together with us. Never had we all been closer. Nor could two parents ever be more proud of their children than we were of David, Mark, and Scott. We found ourselves in that crucial passage in life when, for the first time, the children begin to assume responsibility for their parents. Jim Lehrer, co-anchor of PBS' "MacNeil-Lehrer Report" and a longtime friend, had not missed a day visiting me in the hospital. Eight years ago, he had had his heart attack. An overflow of friends and flowers. Mail came in sacks from wonderful and caring people. I was a blessed man.

While doctors were pleased with my progress, they had been considering whether to perform a routine procedure to remove some remaining blockage. Even though such procedures are routine, doctors would rather not perform them unless they are necessary. Very late on Sunday night, my heart decided the matter for us. I awoke with a severe pain in my lower intestine. Its intensity alarmed me and had me ringing for the nurse. When she came into the room, she sensed I was in trouble. For an hour, a doctor and nurse studied blood and monitors. After medication and sleep, the early morning hours brought in my "A Team" of doctors who had studied the charts of the night before.

"Senator, again, we're going to take you down to the Cath Lab in two hours. Again, we're going into your groin with a catheter and go up to your heart. The process is an angioplasty, better known as 'the balloon.' You will be awake during the procedure, which takes a little over an hour."

Dr. Alan Ross headed up the team. Only a week later, he would be one of three cardiologists to see and consult President Bush after his cardiac episode at Camp David.

Again, I lay in the lab and watched a catheter move from my groin into my heart. After some 45 minutes, Dr. Ross said, "Watch the screen closely. Keep your eye on the end of the catheter. We're about to insert it in this closed artery, blow up the balloon and open it up."

Science fiction. Dr. Strangelove. It worked; Ross and team loved it and gave a big cheer. It was like sinking the 60-foot putt to win the Masters.

Within an hour, Alan Ross was in my room with before-and-after photos. It was the great unclogging. Yes, there was still some blockage, but that little magic pump was working just fine again.

The following Friday, I got to go home. Leaving George Washington Hospital was emotional, since the cementing of bonds had brought me close to a hundred people who had touched my life. Most were lined up there when my wheelchair was pushed into the elevator. I was told early on that heart attack victims can get emotional during their recovery period. I learned that I was no exception.

Our small house on 19th street was almost floor-to-ceiling in flowers, food, books, and mail. For the first time in almost two weeks, I was unhooked from heart monitors and seemed to be free-floating on my own. No longer could I look up and see the activity of my heart on the screen. I felt vulnerable to everything around me. It was an awesome and frightening experience.

For 10 days, I had a routine of reading mail and newspapers and talking on the telephone. Senators and friends would come by during the mornings. My longtime friend Nick Kotz brought me a beautiful pair of Nikes. Jim Lehrer continued to come each day. He would do his newscast and come later in the evenings. We knew, because he had been there before, that nights were hardest for those who had survived heart attacks. For weeks after leaving the hospital, I had a certain dread of the nights to come—and I always welcomed the sounds and feelings of early mornings. Jim became my rock. At any time or circumstance, he knew where I was coming from.

Hearts can play tricks on us. After 10 days of being at home, I chose Dr. Oscar Mann to become the "captain" of my Washington medical team. An internist and cardiologist, he practiced at Georgetown University Hospital. He has a superior reputation. He also is a warm and caring person.

Barbara and I were to meet Dr. Mann in his office at 11 a.m. Monday. It was to be my first trip out of the house and I was excited. Ten minutes into our initial visit with Dr. Mann, I started experiencing mild chest pain.

"How do you feel, as we now speak at this moment? What's going on?"

"I'm having pain, not nearly so severe, but very reminiscent of my heart attack."

With no hesitation, he picked up his phone and told his secretary to advise Georgetown University Hospital that they were about to have a new patient—a David Pryor from Arkansas. Barbara sped me to the hospital in minutes.

Again, monitors, blood, urine, questions, EKG—the whole works. That afternoon was my most despondent period during the weeks since my attack. I started believing there was something I was not being told. Was it going to be this way for the rest of my life? Was I ever going to be able to breathe freely? Was I to be a constant prisoner chained to a heart monitor?

I had not, according to a battery of tests, enzyme counts, and assurances, had another heart attack—only a spasm. My progress has been steady and sure ever since.

I can now be found at the grocery store reading labels and checking products for fat content. The hospital nutritionist assured me, during our first counseling sessions, that I would not have to give up steak entirely. I had just explained that I could do without

smoking cigarettes; I could make it fine with no cream or other high-fat foods. But not steak. I would have to eat a steak now and then. "Sure," she said. "That's no problem."

"How often can I have it, then?" I asked.

"Oh, probably two times a year."

Well, so much for steak.

I'm religious (but not fanatical) about early-morning walks and pray I'll never smoke another cigarette. Before my attack, I knew they were bad for your lungs, but didn't know how deadly they were for the heart. Today, I know.

There's a wonderful community of heart patients out there. I'm now a member of their club. I can talk the language. It does us good to talk to one another and compare notes. Not only is it a catharsis, but an education. Each day, I learn something new about my heart from others in "the club."

Almost daily, some perfect stranger comes up and says, "Senator, I had a triple two years ago—never felt better."

Some 3,000 to 4,000 people sent me cards and letters. I read each one. A fifth-grader from Conway wrote, "Senator, we heard you had died and we're glad it wasn't true. Welcome back."

A wonderful 83-year-old woman from Arkadelphia not only wrote me, but had her niece take a picture of her holding a "Pryor" fan, one of the hand-held fans we gave out during campaigns. She thought it might cheer me up. In late May, I was saddened to see her obituary and that she had died of cancer.

There is a basic unvarnished goodness about the people of Arkansas. There is an unpretentious caring and generosity that comes out when one of us need courage or compassion. Once again, as they have during my 30 years of public life, our people gave me hope and strength.

Well, so much for having a heart attack. Now, it's restructuring time. I refuse to become a professional heart attack victim. I hope that I'll not be known as "David Pryor, who suffered a heart attack in 1991 . . ." Surely there must be something better for which to be remembered.

On June 11, I wrote my colleagues in the Senate. Let me share a few lines of my letter:

"I hope none of you will accuse me of 'preaching' when I close this update by simply saying this to those I care for deeply. Be very careful. Care for yourself. Each of you is a very special human being. Pause every now and then. Take a deep breath. No one but you can decide what is really important.

"Reach out and touch your family. Gather them around you, find strength in your real friends who care. Take some time for yourself, by yourself. Only when life is nearly taken away do we realize how fragile it is and come to know the value of our friends. Thank you for caring. Sincerely, David Pryor."

## TRIBUTE TO THE LATE JO OBERSTAR

Mr. WELLSTONE. Mr. President, my wife Sheila and I and my entire staff are saddened by the death July 28 of Jo Oberstar, wife of Congressman JAMES OBERSTAR of Minnesota.

Our hearts and sympathy go out to JIM and their children and to his staff. All the people of the Eighth District and of the entire State share their loss.

Jo was a terrific person. She was intelligent, poised, warm, and courageous. She pursued her own career and at the same time was very much involved in JIM's career in Congress. She was equally at home in Washington and on the campaign trail in Minnesota.

Jo was director of J.O. Associates, a private, nonprofit professional development organization in Washington. She also was active with the Canadian Centre for Legislative Exchange, which helped bring Members of the Canadian Parliament to Washington.

She received a bachelor's degree from Trinity College in Washington and a master's degree from Yale University. She had taught high school, been a legislative assistant for Congressman John Blatnik and been a director of the Isaak Walton League. She was also a board member of the National Rehabilitation Hospital in Washington and Peace Links, which promotes awarness of nuclear issues.

She was a wonderful mother and a loving wife. She had a zest for life that was unmatched. We will miss her greatly.

## SPECIAL INTEREST GROUPS THREATEN TO DESTROY INDEPENDENCE OF THE JUDICIARY

Mr. HATCH. Mr. President, special interest groups seeking to impose litmus tests on judicial nominees as a precondition of their confirmation threaten to destroy the independence of the Federal judiciary. The single-minded, rule-or-ruin desire to assure preordained votes on particular issues is an assault on the role of the judiciary as a coequal branch of our tripartite central government. The drive by special interest advocacy groups to achieve short-term political gain by blocking a nominee they believe will disagree with them on a particular issue or set of issues will do long term—and perhaps permanent—damage to the judiciary as an institution.

The independence of the Federal judiciary is equally important to all Americans. This is not a liberal or conservative issue. Liberals and conservatives should be equally troubled by any threat to judicial independence. Regardless of one's views on affirmative action, church-state relations, the first amendment, or abortion, the Senate should not be party to efforts to diminish the independence of the judiciary for the sake of assuring that particular cases or issues are decided in a manner satisfactory to some or most Members of the Senate.

Americans expect that each Federal judge and each Supreme Court Justice will fairly assess the merits of every case as the judge or justice sees them. Americans do not want any category of cases or issues decided in advance. They want judges to be free to call them as they see them. Indeed, I am confident that Americans do not expect a judicial nominee to have a firmly fixed view in advance on every issue that may come before him or her. As the late Prof. Alexander Bickle of Yale Law School once said:

> You shoot an arrow into a far distant future when you appoint a Justice, and not the man himself can tell you what he will think about some of the problems that he will face.

I should add that even on those legal issues on which a nominee has a general inclination, the nominee is entitled to change his mind once he assumes the responsibility of membership on the highest court in the land, reviews the facts of particular cases, and assesses the legal arguments on both sides.

Americans do expect the President to select, and the Senate to confirm, able judges of powerful intellect. They expect, on the bench, men and women who perform the judicial function with integrity, fairness, and with their minds and hearts open and focused on the case before them. Americans do not want judges deciding cases based on express or implied commitments to the President, the Senate, or individual Senators. Americans do not want judges deciding cases based on what some special interest advocacy group will think about me decision.

Judicial nominees, including Judge Clarence Thomas, are not running for political office. Their fitness is not determined by whether they can win a popularity poll, and their task is to make the right decision, not the popular decision. That task is too important to be sacrificed on the altar of political correctness.

I was disturbed to see that a poll on Judge Thomas had been taken and publicized within hours of President Bush's announcement of his nomination. I do not question the right of a news organization to take and broadcast such a poll. In my view, however, it disserves the American people to reduce a Supreme Court nomination to the level of popular referendum. I make this point even though the poll I saw was highly favorable to Judge Thomas.

I would add another point about popular opinion and the judicial function. Judging is a function that is supposed to be insulated from outside pressure, both from the other two branches of government and the expression of the popular view of the moment. The role of the judge is to enforce the provisions of the Constitution and the laws enacted by the legislature as their meaning was originally intended by their framers. It is not to substitute the policy preferences of the judge, or the prevailing popular viewpoint, for the law. The guarantees of the Bill of Rights, for example, do not turn on what a majority of Americans believe they mean. Federal judges, indeed, often have to make decisions unpopular with the

President, Congress, or the people. That is why they have life tenure.

There are special interest groups trying to mislead the American people into believing that if a nominee does not commit to their position on an issue or set of issues, the nominee is unfit. Some of these same groups would also have the American people believe that if a nominee does not commit in advance to a position presumably held by a majority of Americans, the nominee is similarly unfit. Nothing could be further from the truth or more damaging to the independence of the judiciary than those two propositions. A judge must follow the law as he or she best sees it, not public opinion polls or the desires of special interest advocacy groups. This is something to be kept clearly in mind as the political-style campaign against Judge Thomas appears to be getting underway, complete with mass direct mailings, possible media advertising, and similar components of an electoral campaign.

The American people will lose much more in the long run from a loss of judicial independence than they would gain if Senate confirmation of a Supreme Court Justice is made to turn on the nominee's agreement in advance with a popular majority on one issue or another, let alone on agreement with special interest advocacy groups.

I do not know how Judge Thomas will rule on abortion issues when he is confirmed, and neither does anyone else. But there are two things I do know:

First, Judge Thomas, when confirmed, will cast one vote, not five. He cannot decide any case or resolve any issue by himself.

Second, the legal correctness of the Roe versus Wade decision, and the legal question as to whether it should be overturned, has as much to do with popular opinion as popular opinion had to do with the legal correctness of the separate-but-equal ruling in Plessy versus Ferguson and the legal question as to whether it should have been overturned. That is to say, popular opinion is not relevant in either case.

If popular sentiment runs against judicial decisions, the people may resort to their legislatures for relief or to the ballot box to replace the President who nominates the judicial nominees; that is the American way. But while the Senate appropriately takes popular opinion into account when voting on legislation, in my view, the Senate should evaluate a judicial nominee on his or her qualifications to serve, not on the basis of polls or the demands of pressure groups. Senate consideration of judicial nominations should be above politics.

In fact, Mr. President, with respect to the abortion issue, many legal scholars across the spectrum have criticized that controversial decision. Let us suppose the Supreme Court overturns Roe versus Wade. What would be the result? It would be up to elected State legislators to decide whether to regulate or restrict abortion, and if so, how. So if the American people feel that abortion should be available in certain circumstances, those views can be given effect through the political process even if Roe versus Wade is struck down as an unsound reading of the Constitution.

I note, Mr. President, that the threat to the independence of the judiciary can come from the political right or left, and from prolife or pro-abortion forces. Such threats should be opposed in all instances. Indeed, I remember the concern prolife groups expressed about the nomination of Sandra Day O'Connor. Liberals then were quick to assert that litmus tests have no place in the confirmation process. They correctly defended an independent judiciary as more important than short-term efforts to impose judicial outcomes on particular issues by the tactic of blocking Senate confirmation unless concessions are wrung from nominees as to how they will vote. And, those same liberals insisted that the President not impose litmus tests in selecting a nominee. They were right. But neither should the Senate impose any such litmus tests, for the same reasons.

Today, the threat to the independence of the judiciary comes from the political left and pro-abortion forces.

I was encouraged, Mr. President, by the remarks of Governor Mario Cuomo, cited in the July 5, 1991, New York Post on this general point. The article noted:

> Cuomo * * * told the Post he also believed Thomas, at confirmation hearings * * * should not be questioned directly on his abortion views or on how he would rule on specific cases such as the * * * Roe versus Wade decision. And, Cuomo said, if Thomas is asked where he stands on such issues, he should decline to answer. "His answer should be: I'll call it after the pitch is thrown, I'll tell you whether it is a ball or a strike after it crosses the plate," said Cuomo.

Mr. President, I ask my colleagues what would have happened if, in the early 20th century and beyond, special interest business groups convinced the Senate to refuse to confirm Supreme Court nominees who did not commit to preserve precedents which had struck down State social welfare legislation, such as minimum wage and maximum hour legislation?

Suppose, Mr. President, segregationist organizations had pressured the Senate to reject Supreme Court nominees not committed to preserving the odious separate-but-equal doctrine of Plessy versus Ferguson, and the Senate had acquiesced in that pressure? Would the Supreme Court ever have overthrown the Plessy versus Ferguson doctrine, as it finally did in 1954 in Brown versus Board of Education?

Ben Wattenberg, a Democrat who is a senior fellow at the American Enterprise Institute, says that quotas should be the litmus test. He criticized a 5-4 decision from June 1990 permitting racial set-asides in the FCC's award of television and radio licenses. Suppose 20 Senators apply that litmus test, and 15 other Senators apply a church-state litmus test seeking to reverse the school prayer decisions, and 15 other Senators impose a litmus test on reversing both the Miranda decision concerning police questioning of arrestees and Mapp versus Ohio imposing the exclusionary rule on the States—not only compelling answers to questions on these matters as a precondition to confirmation, but voting against the nominee if we do not like the answers?

How can any nominee be confirmed if we viewed our role this way?

A President may one day send us a nominee supported by pro-abortion groups. How would they feel if other Senators and I took up Ben Wattenberg's cue on imposing a litmus test on reverse discrimination, another group imposed a litmus test on overturning Miranda as well as the exclusionary rule, and a third group of prolife Senators, totaling 51 Senators, imposed a litmus test on reversing Roe versus Wade?

There is a better process for the Senate to follow in handling Judge Thomas' nomination. It is a process reflecting the long-standing traditions of the Senate, traditions that have sometimes been discarded in the last 35 years but that we should restore. It is that process that I wish to speak about for the next several minutes.

In my view, the Constitution clearly gives the President principal responsibility for judicial selection. The Framers rejected vesting the appointment power in both Houses of Congress or in the Senate alone. Article II, section 2, reads in relevant part: "* * * he shall nominate, and by and with the advice and consent of the Senate, shall appoint * * * judges of the Supreme Court. * * *" The President is entitled to nominate a person who reflects the President's view of the general role of the judiciary in our tripartite system of Government. He is not entitled to seek assurance on how a nominee will vote on particular issues.

The Senate is given a checking function through its advice and consent power. It does not have a license to exert political influence on the judicial branch or to impose litmus tests on nominees. Nor is the Senate entitled to seek the assurances on how a nominee will decide particular issues that the President may not seek. The very function of judging requires independence to weigh the facts of individual cases, to consider the arguments of counsel, and to make up one's mind when confronted by both.

Judge Thomas is not running for political office, nor has the President nominated him to a policymaking posi-

tion in the executive branch. He has been nominated for the highest court in a coequal branch of the Federal Government.

As Alexander Hamilton wrote in Federalist 76 about the Senate's advice and consent function in general, the Senate's "concurrence would have a powerful, though, in general, silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connection, from personal attachment, or from a view to popularity."

I note that prior to 1925, no Supreme Court nominee had even testified before the Senate. The few nominees who appeared before the Judiciary Committee in the following 30 years were not questioned about judicial philosophy or their views on legal matters. When Felix Frankfurter accepted an invitation to testify before the Judiciary Committee in 1939, he made it clear that he did not want to do so. Indeed, he declined to appear on the initial day of the committee hearings, sending Dean Acheson in his place, because he did not wish to miss a day of teaching. So, he showed up before the committee on the second day.

[Thorpe, "The Appearance of Supreme Court Nominees Before the Senate Judiciary Committee," 18 Journal of Public Law, 371, 376, 377 n.29 (1969) [hereinafter, "Thorpe".]

In his opening statement, Frankfurter said,

I, of course, do not wish to testify in support of my own nomination. * * * While I believe that a nominee's record should be thoroughly scrutinized by the committee, I hope you will not think it presumptuous on my part to suggest that neither such examination nor the best interests of the Supreme Court will be helped by the personal participation of the nominee himself.

I should think it improper for a nominee * * * to express his or her views on any controversial issues affecting the Court.

He mentioned that his attitude and outlook had been expressed over a period of years and are readily accessible. Frankfurter said that it would be "inconsistent with the duties of the office * * * for me to attempt to supplant my past record by personal declarations."

One nominee, Sherman Minton, even refused an invitation to testify altogether, explaining that "personal participation by the nominee in the committee proceedings relating to his nomination presents a serious question of propriety, particularly when I might be required to express my views on highly controversial and litigious issues affecting the court."

Since the 1950's, I think it is fair to say without oversimplifying that when some conservative Senators had concerns that a Supreme Court nominee would rule in a manner displeasing to them, in some instances they asked the nominee questions about current legal issues of interest to them. Similarly, since the 1950's, when some liberal members of the Judiciary Committee had concerns about the way a particular nominee might rule in the future, they have asked questions addressing current legal issues.

One commentator has remarked that the appearances of the nominees before the Senate "have tended on occasion to subject nominees to hostile questioning, character assassination, and ridicule." [Thorpe] And that comment was made in 1969.

In my view, while Senators are free to ask a nominee any question they wish, a Supreme Court nominee should answer questions related only to his ethics; competence, including the ability to communicate well both orally and in writing; legal ability; general view of the role of the Supreme Court in our Federal system; willingness to separate personal policy views from one's judicial decisionmaking; and independence of mind, that is, did he make any commitments on issues that might come before him in order to be nominated—or confirmed?

If the Senate probes into the views of a nominee on particular legal issues or public policies, let alone imposes direct or indirect litmus tests on specific issues or cases, the Senate impinges on the independence of the judiciary. It politicizes the judging function. The confirmation process becomes a means to influence the outcome of future cases on issues of concern to particular Senators. And, a nominee may feel that in order to be confirmed, he must agree with this or that Senator on particular legal issues that are within the province of the judiciary. An appearance of a lack of impartiality will arise when those issues later come before the justice. This course is as inappropriate as it would be for the President to seek such influence. The judiciary is the one branch that should be above politics.

A few years ago, the Twentieth Century Fund assembled a distinguished task force to consider the way the Federal judiciary is selected. Former New York Gov. Hugh Carey chaired the task force. Its other members included Prof. Walter Berns of Georgetown University and the American Enterprise Institute; former Secretary of Health, Education, and Welfare, Joseph A. Califano, Jr.; Lloyd N. Cutler, former counsel to President Carter; University of Chicago Law Prof. Philip B. Kurland; Jack W. Peltason, Chancellor of the University of California, Irvine; Nicholas J. Spaeth, attorney general of North Dakota; Michael W. Uhlmann, former Reagan White House official; and Robert F. Wagner, the former mayor of New York City.

In 1988, the task force issued its report, Judicial Roulette. With Mr. Califano and Mr. Cutler dissenting, the task force recommended that—

Supreme Court nominees should no longer be expected to appear as witnesses during the Senate Judiciary Committee's hearings on their confirmation. * * * The task force further recommends that the Judiciary Committee and the Senate base confirmation decisions on a nominee's written record and the testimony of legal experts as to his competence.

The task force added, with Mr. Califano dissenting,

But if nominees continue to appear before the committee, then the task force recommends that senators should not put questions to nominees that call for answers that would indicate how they would deal with specific issues if they were confirmed.

My fear is that if the Senate continues the trend begun in the 1950s, which seems to have accelerated since then, with both liberal and conservative Senators pressing Supreme Court nominees beyond the bounds I have described, we could permanently undermine the independence of the Judicial Branch. We will move closer to the circumstance described by Alexander Hamilton in Federalist 78, wherein the courts exercise will rather than judgment and tend to become a mere extension of the Congress. That the will exercised by the Justices will be shaped by implicit or explicit commitments made to Members of the Congress rather than by the Justices' own policy preferences, as Hamilton warned against, makes no difference. The judiciary will lose its independence if the Senate seeks to substitute its will on particular issues for the reasoned judgment of the Court. And the American people will lose a safeguard against overreaching by Congress. The American people will also lose the assurance that every case will be fairly and impartially decided.

Mr. President, I call upon, in particular, the liberal members of the bar, as well as commentators who are concerned about our system of justice, to come to the defense of an independent Federal judiciary and oppose the imposition of litmus tests on this nominee.

## THE JUSTICE DEPARTMENT: TAKING THE LEAD AGAINST BCCI

Mr. DOLE. Mr. President, America is justifiably outraged about the criminal activities of BCCI—now known as the "Bank of Crooks and Criminals Incorporated."

The press allegations against BCCI are a laundry list of criminal wrongdoing—a multibillion-dollar money-laundering operation, widespread evasion of our Nation's banking laws, and a bribery scheme supposedly implicating high government officials in this country and elsewhere.

But, Mr. President, if you just listened to the liberal media and some of the politicians here in Congress, you would think that Federal prosecutors were asleep at the switch, and even worse, were actively hindering efforts to bring the BCCI crooks to justice.

This may sound good to the skeptics, but it just does not add up.

Although BCCI was chartered in Luxembourg, headquartered in London, and operated in 72 countries, the only successful criminal prosecution against BCCI to date has been brought by the U.S. Department of Justice—not the Manhattan D.A.'s office, not some congressional subcommittee. But—yes—the Department of Justice.

The Justice Department investigation all started in 1986, when customs agents were hot on the trail of illegal BCCI activities in Tampa, FL.

In 1990, the investigation resulted in the conviction of the bank and five of its top executives on money-laundering charges.

British authorities have subsequently convicted two additional BCCI executives—also for money-laundering—largely because of information supplied by the Federal authorities in Tampa.

Mr. President, the Department of Justice is now conducting a thorough grand jury investigation of all allegations of criminal misconduct by BCCI, including the allegation that BCCI nominees actually controlled First American Bank, in violation of Federal Reserve regulations.

In addition to Washington, DC, grand jury investigations are now underway in three other Federal Districts—Tampa, Miami, and Atlanta.

Indictments in all four jurisdictions are expected sometime in the fall.

Mr. President, Congress has a pretty good track record of sabotaging grand jury proceedings.

Several years ago, Congress could not resist the temptation of the Iran-Contra hearings, and we know the results of that misadventure: No convictions, no new revelations, but plenty of press for the media hounds, and millions of dollars in waste taxpayer funds.

Let us face it, congressional hearings on BCCI may make for a few headlines, but they will not put a single criminal behind bars.

No doubt about it, BCCI is a scandal, but so is the Centrust Savings and Loan fiasco—a multibillion dollar ripoff of the taxpayers by a high flier named David Paul, who often bragged of his big-time connections with the Washington political establishment.

David Paul's Centrust has left the taxpayers with a multibillion-dollar price tag—right up there with the Lincoln Savings-Keating scandal—yet, I do not hear any of my Democratic colleagues calling for a formal congressional investigation.

BCCI should be a top priority, but so should Centrust.

Congress should get to the bottom of Centrust, and tell the American people about the web of political connections and regulatory negligence that may have allowed the Centrust ulcer to bleed unabated for years.

## IGT/JAPAN

Mr. BRYAN. Mr. President, in the past few months relatively little attention has been given to our country's trade problems with Japan.

The controversy over a free-trade agreement with Mexico and Canada and the ongoing Uruguay round of GATT largely seem to have displaced Japan at the top of the trade agenda.

We must not forget, however, the magnitude of our trade problems with Japan.

These problems, in their most egregious form, are illustrated by the treatment now being experienced by a major Nevada manufacturing company that has been attempting to obtain Government clearance to sell its products in Japan since 1989.

International Game Technology [IGT] is a world leader in the design and manufacturer of gaming machines, including slot machines and other electronic gaming devices.

In addition to being a major influence in the American market, IGT has demonstrated its international competitiveness throughout the world.

In all major markets outside of Japan, IGT enjoys a market share of about 50 percent. In Japan, however, neither IGT nor any other manufacturer has been able to sell a single machine.

The Japanese gaming machine market is immense.

In particular, the market for a form of slot machine, known as pachisuro, has been growing rapidly and is expected to expand to a level twice the size of all the slot machine markets in the rest of the world combined.

If United States manufacturers were able to obtain a share of this market equivalent to their share of other markets, United States exports to Japan would increase by about $1.5 billion in this industry alone.

At a time when the Japanese pachisuro market is expanding rapidly, every delay in entering the market is critical.

For nearly 2 years, IGT has attempted to follow the instructions of Japanese regulatory authorities in order to obtain permission to sell products in Japan.

At every turn, new barriers have appeared to block IGT. It is difficult to escape the conclusion that the Japanese Government, in close cooperation with Japanese industry, is discriminating against United States gaming machine manufacturers in violation of international trade rules.

Since 1989, IGT has encountered a series of unfair barriers which have prevented it from entering the market.

First, the Japanese Government informed IGT that it would be necessary to join a Japanese industry association, since the Japanese Government has traditionally relied on the association to perform key functions in the regulatory process.

However, the association refused to allow IGT to become a member, on the grounds that it was a foreign manufacturer.

When IGT complained about this, the Japanese Government reversed its advice, and informed IGT that it could apply directly to the Government for regulatory approval, without working with the industry association.

IGT then tried to move forward again, but a new problem soon emerged: The Japanese Government refused to disclose in writing all of the technical standards that are applied in the approval process.

Instead, it insisted that it could only convey that information orally, in meetings.

As directed by the Japanese Government, IGT recently brought an entourage of engineers to Tokyo to meet with the regulatory officials.

In these meetings, the Japanese officials told IGT that it is still in the process of developing guidelines establishing technical specifications under new regulations that went into effect last year.

Accordingly, IGT was told that it would not be possible to know the applicable technical specifications for new pachisuro machines until the new guidelines are finalized, which is expected to be in October of this year.

In the meantime, however, Japanese manufacturers are continuing to receive regulatory clearance for new machines under applications submitted prior to October 1990, which are grandfathered under the previous regulations.

Japanese officials also described the process it is using to develop the technical guidelines.

This process clearly discriminates against foreign manufacturers, in violation of international trade rules.

The GATT Standards Code requires governments to publish proposed technical specifications in advance, and provide all interested parties a reasonable opportunity to comment.

Technical rulemaking in the United States routinely follows this notice-and-comment procedure, providing equal opportunity for both foreign and domestic manufacturers. The Japanese rulemaking for pachisuro machine specifications, however, flatly violates these rules.

As described by Japanese officials, the process has involved a series of closed meetings with the Japanese industry association.

As I have mentioned, IGT was denied membership in this association because it is a foreign manufacturer. The industry association then prepared detailed drafts of the technical specifications, reflecting the oral instructions received from the Government.

Japanese officials have told IGT that the draft specifications are now essentially complete.

However, they maintain that the draft specifications remain the property of the trade association, so that they cannot disclose them until they are formally published in October.

This treatment is outrageous. The rulemaking process is a patent violation of the international trade rules.

It also gives enormous commercial advantage to the Japanese manufacturers, who not only have exclusive input concerning the contents of the specifications, but also, more importantly, are given a critical head start in designing new products in accordance with the new regulations.

For over 1 year, IGT has repeatedly requested the Japanese Government to provide it with copies of all technical specifications applicable to pachisuros.

In June of this year, I joined the rest of the Nevada congressional delegation in sending a letter to the Japanese Embassy requesting copies of these regulations. Each request has been either denied or ignored.

In industry after industry, the Japanese have used a protected home market as a base for developing the experience and economies of scale to dominate the world market.

The same now appears to be happening in the gaming machine industry—an industry in which U.S. manufacturers have demonstrated competitive excellence throughout the world.

This pattern cannot be allowed to continue. Strong action is required immediately.

Today, we have sent a letter to the United States Trade Representative requesting that Ambassador Hills inform the Japanese Government that the United States will not tolerate these outrageous barriers and violations of international trade rules.

In particular, we have urged Ambassador Hills to demand, in the strongest possible terms, that the Japanese make the draft technical specifications for pachisuros available to United States manufacturers immediately, just as they are available to their Japanese competitiors.

If these problems are not resolved promptly, we have encouraged IGT to seek relief under section 301 and other provisions of U.S. trade laws.

If this becomes necessary, we will urge the administration to exercise fully its authority under these laws to compel the Japanese Government to remove these unfair barriers promptly, or face retaliatory measures. I encourage my colleagues to support this effort.

## ISRAEL: IMMIGRATION AND ECONOMY

Mr. LUGAR. Mr. President, I wish to call to the attention of Members a recent address by Ambassador Richard McCormack, a man known by many in the Senate, and who until recently was the Under Secretary of State for Economic and Agricultural Affairs.

His address, "The Challenge of the Immigration and the Obstacles to Growth in the Israeli Economy" describes the history of the largely statist Israeli economy and suggests that dramatic reforms are needed if the Israelis hope to absorb successfully the wave of Soviet immigrants into their economy.

To provide jobs for as many as half a million people will require tens of billions of investment in Israel. Much of this will have to come from private, not government, sources. This means that investors must be convinced that Israel is a cost-effective environment in which to invest. This will only happen if there are significant changes in Israel's economic and political situation.

In the near future, the Senate will be considering a very large guarantee loan program to help Israel finance housing for prospective immigrants to Israel. The conundrum is very simple. If there is no economic reform, many of the houses, whose mortgages would be underwritten by the United States Government, could be vacant in 5 years or so and their former occupants living in Canada, the United States, Australia or elsewhere.

The main issue he addresses is that Israel is faced with an historic opportunity to improve its demographic situation and move its economy toward greater prosperity and self-sufficiency. It would be a great tragedy if this opportunity were missed.

Some have been suggesting that U.S. assistance to Israel would be more effective if it were used to promote economic reform, perhaps along the lines of the World Bank's structural adjustment program, that is, loans in exchange for specific, measurable economic reform. It may be premature to form firm conclusions on this point, and many there will be waiting to see how the peace process evolves in the weeks ahead, but this is certainly something that we will utlimately need to ponder.

I commend Ambassador McCormack's address to all members interested in Israel's economic well-being.

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

ADDRESS BY HON. RICHARD T. MCCORMACK FORMER UNDER SECRETARY OF STATE FOR ECONOMIC AFFAIRS TO THE AMERICAN ISRAEL ECONOMIC CORPORATION JUNE 26, 1991

THE CHALLENGE OF THE IMMIGRATION AND OBSTACLES TO GROWTH IN THE ISRAELI ECONOMY

There are four elements of my presentation today relating to the absorption of immigrants in Israel, and structural problems in the Israeli economy.

1. A brief history of U.S.-Israeli efforts to secure structural improvement in the Israeli economy.

2. A description of the talent pool represented by Israel's recent and prospective Soviet immigrants.

3. Needed microeconomic reform within the Israeli economy, without which the Israeli economy will neither be able to attract nor hold new, highly skilled immigrants in the hoped for quantity.

4. The role of the peace process in Israeli economic and immigration prospects.

I. A BRIEF HISTORY

Israel has always faced difficult challenges. It was born into a hostile world, and has periodically faced military threats to its very existence as a nation. Less dramatically, it has faced a number of major economic challenges. One was the threat of hyperinflation in the mid 1980s. Israel successfully responded to that challenge, instituting major reforms which quickly reduced the rate of inflation to 20%.

Now Israel faces an equally difficult economic challenge—to integrate a million immigrants into its economy over the next few years. Unlike the earlier challenges, this one has a silver lining: For years, we have all pressed for a change in policies in the Soviet Union that would free Soviet Jews to emigrate. Now that is happening. A large group of talented and highly trained people is coming to Israel. With the hope that they bring, they also bring a formidable economic challenge: how will jobs be provided for these new emigres? More precisely, how will the Israeli economy create the jobs which take advantage of their skills?

One of my pleasant duties as Undersecretary of State for Economic Affairs was to meet with Israeli officials periodically under the auspices of the JEDG—the U.S.-Israeli Joint Economic Development Group. That group, instituted by Secretary of State George Shultz and strongly supported by Secretary James Baker, provides a forum where leaders from our two countries can put our heads together to address some of the fundamental problems in the Israeli economy. These problems are, of course, the fundamental responsibility of the Israeli Government. But, as interested and sympathetic outsiders, the United States Government has tried to provide constructive suggestions. In particular, we have tried to reinforce the hand of those within the Israeli Government who are striving to deal with fundamental economic problems. In our advisory role, we have been ably assisted by a number of outstanding American economists, most notably Herb Stein and Stan Fischer.

The first task of the JEDG was to help in the development of a program to combat inflation which had accelerated to an annual rate of more than 400% by late 1984. The Israeli Government had by that time identified some of the essential elements of a macroeconomic stabilization program, including selective tax increases, a one billion dollar budget cut, the devaluation of the shekel, and an effort to reach agreement with labor and management on holding down wages and prices, possibly including a ninety-day freeze. Secretary Shultz was skeptical of a freeze, and noted the absence of any reference to a key element of an anti-inflationary program, namely, control of the money supply. He suggested a joint working group to develop further suggestions for a program with each side calling on two to four nongovernmental economists. The idea was that these economists could make suggestions freely without committing their governments. By providing friendly, expert, and somewhat detached advice, they could help to marshall support for the critically needed reforms.

In March 1985, the State Department sent its two key consultants—Herb Stein and

Stan Fischer—to Israel to help to clarify issues further. They developed a ten point plan which was close to the earlier Israeli program, with the notable addition of an inflation target for the Bank of Israel, backed up with a control on total credit. This private communication to the Israeli Government quickly leaked, causing a short-term hostile reaction, but probably contributing to moving public opinion toward support of such a program. Events were, of course, even more powerful—the inflation rate was soaring towards one thousand percent.

The anti-inflationary program was an immediate success: Inflation—which had been 30 percent per month before the government's program was announced on July 1, 1985—fell to 3.9 percent in the month of August. Since that itme, inflation has been quite stable, near 20% per year—not a figure to promote complacency, but one which is clearly superior to the experience of the early 1980s. However, stabilization on the macroeconomic side has not been matched by success in raising the real growth of the Israeli economy. Between 1965 and 1980, Israeli GNP grew almost twice as fast as the average of the countries of the Organization for Economic Cooperation and Development (OECD). Since 1980 it has been less.

While it can be very difficult to marshall the political will to attack the roots of inflation, that problem is nevertheless quite well understood. To control inflation, monetary and fiscal restraint holds the key. The keys to economic growth—which must be used if Israel is to successfully absorb the flood of immigrants—are much more complex and multifaceted, although, like the inflation problem, they may require difficult policy decisions.

II. HIGH SKILLS OF IMMIGRANTS

Never in history has a country been blessed with such a highly skilled group of immigrants. No only is the proportion of scientists, physicians, and engineers high, it is much higher than already exists in Israel. Almost 25% of the 1990 immigrants were engineers or architects—compared to about 2% in the existing Israeli population. About 15% of the immigrants were technicians, compared to 4% in the existing population. About 6 ½% of the immigrants were physicians, compared to just over 1% in the existing population.

Even with the most flexible and adaptable of economies, not all these trained people could be put to use in their chosen professions. This is most clearly the case with doctors: there is only so much need for medical services in a population. Some expansions in the demand for doctors might be achieved through contacts with the outside world. For example, Israeli firms might hire some doctors to do medical or pharmaceutical research on contract for foreign firms. But it is rather clear that some of the physician immigrants will not be able to find jobs in medicine in Israel and will have to look to other occupations. The potential over supply of doctors is, however, perhaps not so dramatic as the raw figures suggest. To put not too fine a point on it, the standards for medical training are much higher in Israel than in the Soviet Union. I understand that only 20% of the first 1,000 immigrant physicians passed the Israeli medical exam. Nevertheless, there may be difficulty in usefully employing all the immigrant doctors who do meet Israeli standards.

The possibility for usefully employing other highly skilled people—engineers, scientists, and technicians—is in principle much greater than for physicians. An economy may be restructured toward the production of high-tech goods and other products using a high input of trained personnel. The question is not whether such an adjustment logically can be made; the issue is what must be done to ensure that it does happen.

Before turning to the difficult issues of adjustment, let me begin on an upbeat note. For a country attempting to grow and improve its living standards, educated and trained personnel can be the most strategic and important prerequisite. After the Second World War, there were many trained people in Western Europe, with long experience in sophisticated production. The existence of such "human capital" was one of the keys to the rapid recovery and growth in the decade following the war. And it is the lack of such human capital that makes the development process so difficult in some of the countries of the third world. Fortunately for Israel, it has many highly trained people and is getting more.

Let me, however, add one caution. The training and talents of the incoming group is quite uneven. In terms of scientific skills, they are quite remarkable. But in terms of entrepreneurial skills, they are much less impressive. After all, they come from a society which values science highly, but has had a byzantine approach to administration and a deeply rooted suspicion of entrepreneurship. Entrepreneurship, not scientific knowledge, is likely to be the most significant constraint on progress towards a more prosperous Israeli economy.

III. URGENTLY NEEDED MICROECONOMIC REFORMS

For the past several years, the discussions at meetings of the U.S.-Israeli Joint Development Group have centered around eight key microeconomic reforms, which were summarized in a recent article by Herb Stein published in The Americn Enterprise. They were:

1. Cut the government budget, including the number of government employees.
2. Reduce taxes, or at least reform the tax system to reduce the highest marginal rates.
3. Free capital and credit markets, so that savings would flow where investors could use them most profitably, not where the government directed them to go.
4. Eliminate, or at least drastically reduce, the remaining price subsidies and price controls.
5. Reduce the scope of government regulation greatly, especially on the establishment of new private enterprises by local residents or by foreigners.
6. Ease restrictions on international trade and capital movements.
7. Get away from the system of government-sponsored monopolies or cartels.
8. Privatize a large part of government-owned industry.

We made modest progress with some of the agenda items, virtually none in others, but without vast additional changes it will prove virtually impossible to attract the investment capital in required amounts to generate jobs for new and prospective immigrants.

*Capital*

Forecasting capital needs is far from an exact science, but large amounts of foreign capital will be required for a successful absorption of the new immigrants. Most of the standard macroeconomic scenarios for the next five years suggest a need for overall capital imports of something like $30 billion, even after a reasonably healthy growth of exports of 8 to 9% and a rescheduling of outstanding debts.

Some of the sources may be identified. Economic grants from the United States Government have been $1.2 billion per year. The Israeli Government has been raising about $750 million annually through bond and note sales abroad. It may be possible to raise that figure by several hundred million, but a really large increase would presuppose major changes in the Israeli economy and an improvement of Israel's credit rating (now set at BBB by Standard and Poor's). The Jewish Appeals have been raising about $400 million per year from Jewish communities abroad; special appeals to help with immigrants may raise that figure. But past international sources of capital will not be adequate to the tasks ahead.

Unfortunately, attracting additional capital from international markets may be quite difficult because of the tight conditions that are likely to exist. Specifically:

The international demand for capital is likely to be strong in the 1990s, quite possibly stronger than at any time in the late 1940s.

It is possible that real interest rates, which many thought were high in the 1980s, will remain just as high or even go higher in the 1990s.

There is likely to be an intense competition for scarce capital with countries that pursue poor economic policies losing out to more favorable locations.

I hasten to add, however, that the outlook for the international capital market is open to unusually great uncertainties. Most notably, the outlook in Eastern Europe is shrouded in mist. There is a very large need for capital in that area. But it is unclear how much of the need will be translated into an effective demand. If reform and marketization take hold, investors may be willing to commit significant resources to those countries.

At the same time as potentially large demands on international capital markets are developing, traditional sources of supply are showing signs of shrinking. Specifically, Japan and Germany are likely to be less prolific sources of capital than they were in the 1980s, for reasons that are widely understood.

On the other hand, the United States should be a smaller net claimant on international capital than it was in the 1980s. The current account deficit has been falling since 1987.

Overall, however, the competition for international capital may be intense, and additional U.S. loan guarantees cannot possibly fill the yawning capital gaps in Israel's needs absent massive reforms and policy changes.

*The Need for Flexibility and Reform*

Major changes are needed to improve the flexibility of the Israeli economy to increase domestic sources of capital, to use capital more efficiently, and to improve the ability of Israel to compete for international sources of capital. This would parallel the changes being made in a number of countries: a more limited role for the government, economic liberalization, and privatization. There is a need to address the problems of unresponsive labor markets, limited competition in major sectors of the economy due to cartelization and protectionism, and economic policy gridlock. The goal should be an Israel where the market mechanism is allowed to play a much more central role—in the market for capital, in the market for labor, and in the market for goods and services.

I earlier spoke of the importance of entrepreneurship if the Israeli economy is to expand vigorously. In my view, major steps to-

ward privatization would be one of the most positive things that Israel could do to promote entrepreneurship. Of course, other steps could help too, particularly steps to reduce government interference in the economy and improve the incentive structure facing Israel businesses.

*Capital Markets in Israel*

The Government of Israel has moved forward with a number of significant steps, such as reducing pension fund required investment in government bonds from 65 to 50 percent, allowing exporters to hold foreign currency, and changes in minimum loan periods for foreign loans. However, more needs to be done. At a time when capital resources are scare it is particularly important to use existing capital resources efficiently.

*Subsidies and Taxation*

The government of Israel accounts for 40 percent of all employment and over 50 percent of GNP. Subsidy and tax policy impede competition and limit potential growth. Overregulation acts as a drag on efficiency. For example:

Supervision and licensing act as barriers to entry. Yet small new companies can be a major source of new jobs, and add dynamism and flexibility to an economy.

Over the years tax breaks and loopholes have lowered the effective tax rate for privileged sectors while keeping overall rates very high. The tax burden needs to be spread more evenly and equitably.

Subsidized water leads to overproduction and exports of water intensive products—most notably, cotton. Cotton should be exported from areas with high rainfall—such as Alabama or Georgia—not from Israel. In the face of severe water shortages, changes have recently been made to reduce the availability of cheap, subsidized water. But more needs to done. Coastal aquifers are in grave danger.

*Trade Policy*

Free trade agreements with the United States and the European community have reduced many trade barriers between Israel and its major trading partners. But Israel maintains substantial barriers to imports of both manufactured and agricultural goods from the rest of the world. The Government of Israel has been considering "tarrification," or replacing various nontarrif trade barriers with equivalent levels of tariffs, which would be gradually reduced or eliminated. It is not clear how quickly the government will move on its program. Only by giving a clear signal on trade reform will the government help promote efficient domestic industries and enhance trade opportunities.

*Privatization Policy*

The Israeli Government needs to adopt an effective privatization program to reduce the government's role in the economy and provide an environment that can attract and hold the new immigrants. The Israeli Finance Ministry has recognized the need for privatization, but an aggressive privatization policy is yet to emerge.

*The Labor Market*

The Israeli labor market lacks flexibility. The minimum wage law and relatively generous unemployment compensation reduce the mobility of labor. The linkage between public and private wages and the minimum and average wages builds raises wage costs.

*The Moda'i Reforms*

Finance Minister Moda'i introduced proposals some months ago for reforms in the labor and capital markets to increase the flexibility of the Israeli economy. Some of the capital market reforms, which could be adopted administratively, have moved forward. But the labor elements of the Moda'i program are stuck in the Knesset while the government works out an arrangement with the Histadrut.

*Economic Reform: Adding a Sense of Urgency*

Having spent some time in Washington, I, of course, understand some of the political constraints on policymakers, particularly when changes are being proposed in labor market institutions. I likewise understand the argument that the Israeli Government is currently focused on central security concerns, including the prospect of peace negotiations. But I would like to offer two reasons for more vigorous efforts to move the economic reform process forward.

The first reason is that the microeconomic reforms needed now are much more complex and subtle than the marcoeconomic reforms of the mid 1980s. What is needed is a broad, comprehensive program of liberalization whose major payoffs—while critically important—will be delayed while adjustments take place. This means that the government does not have the luxury—if I may put it that way—of delaying as they did in the mid 1980s until a full-fledged crisis has developed. When a macroeconomic crisis develops, as it did in 1985, the main outlines of a remedy are relatively clear, although they may be painful. Unlike a macroencomic crisis—which becomes obvious as inflation accelerates uncontrollably—a microeconomic crisis is much less sharply defined, and points much less clearly to the required solution. Indeed, in the fact of a deteriorating situation, we are likely to hear calls for more government intervention when the economy is already overregulated. Action is therefore needed before problems are allowed to build into a crisis. I believe that Israel does not have the luxury of waiting. We are already receiving reports that Soviet Jews are hesitating about coming to Israel after hearing negative reports about employment prospect from friends and relatives already in the country.

The second reason has to do with the unique political, military, and strategic position of Israel. It is sometimes argued that the time is inopportune for comprehensive economic reform. With the defeat of Iraq, a number of countries, including the United States, have turned attention towards the possibility of a peace settlement between Israel and its Arab neighbors. Some would argue that the issues raised by a possible peace negotiation are so complex and so demanding that secondary matters—such as economic reform—must be allowed to slide. With this I disagree. Nobody can dismiss the importance of the peace issue. But the time is likewise ripe for economic reform. If the next year or so it allowed to slip, Israel may have lost an historically unique opportunity to integrate hundreds of thousands of immigrants into its economy.

Moreover, the peace process and economic reform should not be seen as competing demands on the attention of political authorities, but rather as parts of an intertwined web. A peace settlement would be one of the most positive things that could be done to make Israel a more attractive place for international investment. At the same time, economic reform can strengthen the Israeli economy and thus add to the overall security of Israel.

IV. THE ROLE OF THE PEACE PROCESS

It is my hope that the first halting steps toward an Israeli Arab peace dialogue will produce later this year a full blown peace conference, and eventually a reconciliation between Israeli and Arab in the Middle East. If both sides show some degree of flexibility, and others involved in the process do not lose patience with the lengthy and sometimes frustrating preliminary posturing, I believe that peace is possible and that this would be massively helpful to the prospects for regional prosperity, including Israel, and the successful absorption of a million new immigrants in Israel.

Quite apart from eliminating the physical dangers that stem from the Intifada in Israel, peace would wipe out many longer-range concerns that are causing some prospective immigrants and investors to delay decisions on behalf of Israel.

There is concern that if the peace process should break down utterly, that the Intifada would spawn one final desperate phase of violence in the form of car bombs in urban centers, shootings, and other forms of directed lethal activity against Israelis.

There is concern that such large violence could strengthen those in Israel who have always argued for a massive explusion of Palestinians, and that this could undermine the tenuous Cold Peace with Egypt.

There are even longer-range concerns that, just as the friendly Government of Sudan of the 1980s was overthrown by an Islamic fundamentalist regime which turned hostile toward Israel, so too could a similar situation occur in Egypt, where millions of Muslems do not support their government's interaction with Israel. New confrontations could replace today's Cold Peace.

There is concern that the Soviet Union, driven by the need for arms sales, could, under future leadership, become reengaged more energetically in a supply and advisory relationship with Israel's enemies.

There is concern that Israel's first strike military doctrine, which is likely to continue in the era of the improved Scud, would limit the ability of potential friends to be actively helpful in a future conflict. Urban centers in Israel could be targeted in such future conflicts by weapons of great destruction.

There is concern that ten years from now when the West will be even more dependent upon oil from the Persian Gulf, that a new oil embargo or an even more effective boycott operation could undermine stability and prosperity.

By contrast, if the peace process begins to develop favorably, this will greatly encourage those in the Soviet Union now weighing decisions on whether or not to emigrate to Israel. It will also have a favorable impact on potential investors and creditors in Europe and elsewhere.

Obviously, it is not just Israel which is responsible for the success or failure of the peace process. All parties must reexamine long-standing positions if this process is to succeed. But there is no doubt but that a successful peace process would have immediate and profound impact upon Israel's ability to attract and employ large numbers of new immigrants.

There are those who view the prospects for major reform of the Israeli economy and a successful peace process with a great sense of pessimism and futility. You hear this old business about the frog and the scorpion, and that somehow the Middle East is impervious to logic. I don't buy that for a minute. In fact, I have never been more optimistic

about the possibilities for constructive change than I am today, and I have been following events in the region for many years. Why this optimism?

First, on the economic front. There has been a massive and sustained campaign for twenty-five years to enable Soviet Jewry to move to Israel, partly to help contribute to a solution to Israel's demographic problem. But without major economic reform, this large-scale immigration will simply result in a massive unemployment problem, which in turn will trigger an equally massive emigration of Israelis to other more prosperous countries. Canada, Australia, the United States and other recipient countries will be the gainers in such a situation. Israel will be the loser. And there are already signs of a slow down in emigration from the USSR, as jobless immigrants write disappointing letters to relatives remaining in the USSR.

Do Prime Minister Shamir and his Cabinet want to be remembered as the government that blew the greatest opportunity for demographic security and economic prosperity that Israel had been given in forty years? I can't believe this. Thus, I assume that economic reforms will, in fact, be forthcoming. And I am deeply encouraged by the recent study put forth by the Bank of Israel on needed economic reforms. I am equally encouraged by the prospective appointment of the able Jacob Frenkel to the helm of the Bank of Israel.

By the same token, I feel hopeful about the peace process. I do not believe that any government with an eye to history wants to be remembered during the carnage of the next Middle East war as having missed the boat when a regional peace conference was possible under favorable circumstances in 1991.

So, put me down as an optimist, both on the economic reform front, and on the peace process. I think that events of an historic nature will provoke an equally historic response from the Government of Israel.

Will it be a little slower than one might ideally wish? Certainly. Will it go as far as one might ideally wish? Probably not. But it will, in my view, be sufficient to meet the challenge. And that's all you can ask of any government, including our own.

## THE VAN RIPER TWINS, MARINE CORPS LEGENDS

Mr. NUNN. Mr. President, at the Marine Corps Base, Camp Lejeune, NC, a unique event took place several weeks ago. A change of command occurred in which Maj. Gen. William N. Keys turned over command of the 2d Marine Division to Brig. Gen. Paul Van Riper.

Major General Keys commanded the 2d Marine Division during Operations Desert Shield and Desert Storm. Under his leadership, the 2d Marine Division performed in outstanding fashion and achieved major military successes. General Keys, now a lieutenant general, assumed command of Fleet Marine Forces Atlantic from Lt. Gen. Carl Mundy, who subsequently took over as Commandant of the Marine Corps on the first of July.

Mr. President, today I want to focus on the unique aspect of these changes in that the 2d Marine Division now has in its two top positions twin brothers, Brig. Gen. Paul Van Riper and Col. Jim Van Riper, the current chief of staff of the Division. These brothers, who are identical twins, are among our Nation's top military professionals. Their careers and accomplishments and approach are such that they have become legends in the U.S. Marine Corps because of their outstanding service and the fact that both are the embodiment of all the characteristics that are the hallmarks of what it means to be a marine.

Both served two tours in Vietnam and both served in combat in Operations Desert Shield and Desert Storm. Both have attended all the key military schools and have served in key jobs throughout the Marine Corps. Both are strong family men.

Both of these highly decorated warrior marines have had other demanding jobs throughout their Marine Corps careers and, as the fabled Marine Corps hymn so eloquently says, have served in "every clime and place."

But the hallmark of these two marines who now serve in the top two positions in the 2d Marine Division is their unchanging, unrelenting dedication to excellence in every task they undertake. As consummate military professionals, there are no short cuts of second best when they are involved. They set the highest standards and lead by example.

I have had the good fortune to meet and visit with both of them at various points in their careers. As recently as several months ago, we met with Paul Van Riper when Senators WARNER, INOUYE, STEVENS, and I visited our forces in Saudi Arabia several days before the ground war commenced. I have visited with Jim Van Riper in years past during several of his tours at Headquarters Marine Corps. I have always been impressed with their knowledge, their commitment, and their keen military judgments.

I also know about their careers and keep up with their various assignments because the staff director of the Armed Services Committee, Arnold Punaro, has also served in the Marine Corps both on active duty and in the Reserve for over 20 years. He has served with both of these marines and knows their abilities firsthand. Jim Van Riper, during his second tour in Vietnam, was a company commander and had as one of his platoon commanders then 2d Lt. Arnold Punaro. Twenty years later, then-Colonel Punaro served in a Reserve unit under the direction of Paul Van Riper.

Mr. President, I bring the Van Ripers to the attention of the Senate because I am unaware of a similar situation during my service when identical twin brothers with such distinguished combat records have held the top two positions in a major combat unit.

I also believe it is important to recognize the superb talent in our military and, in particular, these two Marine Corps legends, Jim and Paul Van Riper.

## HONORING MARINE COMMANDANT GEN. ALFRED M. GRAY, JR., USMC

Mr. NUNN. Mr. President, I want to pay tribute today to an outstanding American and a true hero. Gen. Al Gray ended a 35-year career of service to our Nation as Commandant of the Marine Corps on July 1, 1991. The Marine Corps had a very impressive change of command ceremony at the historic Marine Barracks at 8th and I Streets in southwest Washington. No ceremony, however, could do justice to the contributions General Gray made not only to the Marine Corps but also to the military profession as well.

My association with General Gray goes back into the 1970's when he was a colonel and had just completed Operation Eagle Pull, the evacuation of Saigon. Our paths have crossed many times since then.

It is both appropriate and ironic that the Marine Corps and the Nation honored General Gray at the oldest barracks in the corps. It is appropriate because the barracks is the ceremonial post where historic events have occurred since the 1800's. It is also ironic because General Gray is one of the most forward-looking and innovative military men that I have had the pleasure of knowing. He does not look back; he is always looking forward.

General Gray's long-range vision, particularly in the 1970's, was seen in the recent successes of our Marine Corps forces in the Persian Gulf. His far-sightedness in leading the strategic thinking and debate that resulted in reorienting Marine Corps doctrine from attrition warfare to maneuver warfare was just as essential to winning so overwhelmingly, as did having the right light armored vehicle, the right tank, the right aircraft, or the right marine on the ground, at sea, and in the air, with the right skills, leadership, and abilities.

His vision was a primary driver behind the professionalism that we see so evident in the Marine Corps today, both among officers and enlisted. It was only some 40 years ago that General Gray was an enlisted marine himself.

He has led by example, and he has led by articulating a clear roadmap of where he felt the Marine Corps should be headed. He is a highly decorated combat veteran who has been willing to give a full measure of service to his country. His integrity and dedication to duty are unsurpassed and unquestioned.

Mr. President, the Marine Corps, the Congress, and the American people will sorely miss General Gray's contribution as a marine's marine, but will anxiously await his continuing contribution in the national security field and in whatever task he undertakes.

I am sure all Members of the Senate join me in wishing General Gray and

Jan, his wife, every success and happiness in the years ahead.

## MONTREAL PROTOCOLS RATIFICATION CONCERNS REGARDING SUPPLEMENTAL COMPENSATION PLAN

Mr. MITCHELL. Mr. President, on June 24, 1991, I wrote to the American Law Division of the Congressional Research Service concerning the proposed ratification of the Montreal protocols and the administration's proposal for a supplemental compensation plan [SCP]. At that time, I raised concerns relating to the institutional separation of powers. On June 28, I also submitted for the record copies of correspondence discussing the merits of the protocols themselves.

Today I wish to share with other Members of the Senate a copy of the response I have received by the American Law Division. I ask unanimous consent that a copy of the legal memmorandum dated July 8, 1991, be printed in the RECORD at that end of my remarks.

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

(See exhibit 1.)

Mr. MITCHELL. I also ask that a copy of an August 1 letter which I have written to the Secretary of Transportation be printed in the RECORD.

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

(See exhibit 2.)

Mr. MITCHELL. The administration previously has indicated that the proposed SCP is unprecedented in nature. The ALD opinion indicates that the proposed conditioning of consent to ratification on agency implementation rather than implementing legislation also seems to be unprecedented. Analogous precedents might still be found; however, under the circumstances, I do not believe that Senate should proceed to consideration of the protocols until concerns related to the SCP are fully addressed.

In my August 1 letter to the Secretary of Transportation, I have acknowledged that there are certain advantages to proceeding in the manner recommended by the administration and the Foreign Relations Committee. If necessary, Congress still would retain the power to enact a statutory authorization for the SCP at any time after consenting to ratification.

Nonetheless, there is a risk in proceeding as the administration has proposed. If the protocols are ratified and a subsequent legal challenge against the SCP is successful, it is my understanding the $130,000 limit under the protocols would still apply and effectively create an absolute limit on recoveries—unless Congress then enacts remedial legislation or the President denounces the protocols.

The risk may be minimized by legal opinions that have been offered in support of the Department of Transportation's existing authority to implement the SCP. But the unprecedented nature of the plan still makes it a legitimate concern. I therefore have asked the Secretary for suggestions as to how this risk and concern might be further mitigated—along with any clarification of the circumstances under which the administration, if necessary, might denounce the protocols.

Unless sufficient mitigation of this risk is present, if the matter reaches the full Senate, then the Senate may wish to consider requiring implementing legislation as a condition of ratification in order to protect its institutional concerns. That issue is distinct from the more basic question of whether or not the Senate should consent to ratification.

I continue to approach the protocols and related issues with an open mind. I encourage other Senators to do the same. I look forward to considering further comments and suggestions by the administration and all other interested parties.

EXHIBIT 1

CONGRESSIONAL RESEARCH SERVICE,
*Washington, DC., July 8, 1991.*

To: Office of the Majority Leader, United States Senate, Attention: Hon. George J. Mitchell/Bob Carolla.

From: American Law Division.

Subject: The Montreal Aviation Protocol No. 3 and the Supplemental Compensation Plan.

This memorandum is in response to your correspondence of June 24, 1991, raising a number of questions regarding Montreal Aviation Protocol No. 3, an international agreement pending Senate consideration pursuant to Article II, §2, cl. 2 of the Constitution which requires that chamber's advise and consent on international agreements. Of particular interest to you is the Supplemental Compensation Plan (SCP) whereby the parties may adopt a national system to supplement the maximum compensation payable to claimants under the Aviation Convention as modified by Protocol No. 3 in the event of death or personal injury to passengers.

A little detail regarding the Convention and the pending modification seems in order not only to set the context but because its terms, particularly in respect to the SCP, indicate possible answers to one or more of the four specific questions contained in your correspondence.

The Convention for the Unification of Certain Rules Relating to International Transportation by Air (the Warsaw Convention) was concluded at Warsaw on October 12, 1929 and entered into force February 13, 1933. The United States became a party on October 29, 1934. 49 Stat. 3000; TS 876; 2 Bevans 983; 137 LNTS 11.

The Warsaw Convention establishes a uniform set of rules governing the international air transportation of passengers, baggage, and cargo. Among other things, it establishes the basis for determining jurisdiction in the case of an accident and sets the limits on the liability of the airlines. The limit may be exceeded only if the victims or their survivors can show willful misconduct on the part of the airline. Uniformity was deemed essential because of the differences in legal systems and customs among the nations of the world and a cap on liability was widely regarded as being necessary to protect the then infant aviation industry.

The Warsaw Convention limits liability for death or injury to passengers to what is now about $10,000. In 1955 a virtual doubling of the limit was agreed to at the Hague. This change was not ratified by the United States because the Congress believed the limit was insufficient to compensate for the loss of American lives. Despite United States nonadherence to the Hague Protocol, its limits on liability effectively limit recovery by Americans traveling between two foreign points. Senate Executive Report 102–1 (1991) at page 2.

Dissatisfaction with these limits led the United States in 1965 to announce its intention to denounce the Convention. At the last minute it agreed to remain a party when air carriers serving the United States signed the 1966 Montreal Agreement accepting liability up to $75,000 regardless of fault. The Montreal Agreement applies to air travel to, from, or through the United States on both foreign and domestic airlines. *Id.* at 3.

Subsequent negotiations resulted in the adoption of the Guatemala City Protocol, opened for signature March 8, 1971, which increased the passenger liability limit to $100,000. Among other features, the Guatemala City Protocol permits a nation to adopt a domestic system to supplement the passenger liability limit. *Id.* at 4.

It should be noted that while the United States had been a prime mover in these efforts to update the 1929 Warsaw Convention and conspicuously so in the matter of raising the amount of authorized recovery, it is not a party to any of the subsequent protocols. Ibid.

In 1975 Members of the International Civil Aviation Organization (ICAO) met in Montreal and adopted four protocols to update the Warsaw Convention Protocol No. 3, which deals with an airline's liability of passengers and baggage, is the one immediately implicated by your inquiry.

Protocol No. 3 increases an airline's liability to about $130,000 regardless of fault. In other words, claimants have to prove only that damages resulted from an accident, not that the airline involved was at fault. However, Protocol No. 3 does away with the provisions of the Warsaw Convention which allow claimants to recover additional amounts by slowing misconduct on the part of the airline.

Particularly noteworthy for present purposes is that fact Protocol No. 3 picks up on the Guatemala City Protocol's supplemental feature and allows the parties to set up supplemental compensation programs. "In effect, * * * [the Protocol's entry into force for the United States would establish] to two-tiered system under which the airlines would be liable for the first $130,000 per passenger and the supplemental plan would be expected to provide for recoveries beyond that amount and would cover fully the remainder of all economic and noneconomic losses with no cap on the amount." *Id. at 7.*

The SCP developed in cooperation with the Department of Transportation is to be funded through a ticket surcharge. All airlines, both American and foreign, selling tickets would be obligated to collect the surcharge. All citizens and permanent residents would be covered on international flights regardless of where they buy their tickets *Id.* at 55 *et seq.*

As envisioned by the proponents and supporters of the Protocol, no implementing

legislation is needed to carry out the SCP. Instead, it is based on the Secretary of Transportation's existing authority with respect to rates and charges for foreign air travel, his conditioning authority for the grant of operating certificates to international carriers, and his power to approve intercarrier agreements and grant immunity from the antitrust laws. Statutory authorities relied on for this conclusion will be found in the Department of Justice correspondence of January 22, 1991, reprinted as Appendix III, Senate Executive Report 102–1 at 69, reprinted as Appendix III, Senate Executive Report 102–1 at 69. Two congressional support agencies have expressed views in harmony with the position of the Department of Justice. American Law Division, Congressional Research Service, id. at 72; General Accounting Office, Senate Executive Report 101–21 (1990) at 78–79.

The record, legislative and historical, on the subject of liability for airline passenger death and injury, clearly indicates that the Protocol's SCP provision is largely a concession to United States concerns for modernizing the Aviation Convention and a desire by the international community to keep the United States a part of its regime. At the same time, it is equally clear that the SCP envisioned by the Protocol No. 3 is a voluntary arrangement which the parties are free to implement or not as they see fit. The Protocol takes a neutral position, stating, in relevant part, that "No provision contained in this Convention shall prevent a State from establishing and operating within its territory a system to supplement the compensation payable to claimants under the Convention in respect of death or personal injury of passengers." Article 35A. The SCP developed in cooperation with the Department of Transportation and assumed by the resolution of the Senate Committee on Foreign Relations recommending Senate advice and consent to ratification (a Committee recommended proviso makes a satisfactory, operational SCP a condition precedent to deposit of the instrument of ratification) is essentially a mandatory insurance program funded by the mentioned surcharge paid by passengers whose travel originates in the United States. It would permit the previously described second tier of recovery, that is, the recovery of damages which exceed the maximum of $130,000 per passenger for which the airlines are liable up to $500 million per incident.

Placing your initial more general question aside for consideration later and with the foregoing as background, questions 1 through 4 set out in your correspondence are addressed in that order.

The first question generally asks for precedents along the lines of Protocol No. 3 in regards to the SCP. Stated differently, you request previous instances when the Senate has advised and consented to an international agreement on condition that it will be implemented administratively rather than by the adoption of follow-on legislation or its equivalent.

The practice of conditioning Senate advice and consent so as to prohibit deposit of the instrument of ratification until implementing legislation is adopted is a fairly common one. See, for example, the Treaty between the United States of America and the United Mexican States on the Execution of Penal Sentences which entered into force November 30, 1977. 28 UST 7399; TIAS 8718.

In contrast to this fairly routine practice, our research has failed to turn up any precedents in line with the approach taken in connection with Protocol No. 3 and, accordingly, the latter seems to be unprecedented. Unfortunately for all concerned, research into past practices of the Senate in qualifying its advice and consent on international agreements is not benefited by indices or data bases facilitating access to the subject. We have consulted old and modern classics on the subject of treaties and sought out institutional memories in search of an answer without success. E.g., Butler, The Treaty-Making Power of the United States (1902), Crandall, Treaties: Their Making and Enforcement (1916), Wright, The Control of American Foreign Relations (1922), Henkin, Foreign Affairs and the Constitution (1972), Whiteman, Digest of International Law (1973), Rest. 3rd, Restatement of the Foreign Relations Law of the United States (1986), Treaties and Other International Agreements: The Role of the United States Senate, S. Prt. 98–205 (1984). Although probative, the failure to identify a relevant precedent is not definitive proof that the sought for precedent does not exist. The latter could be firmly settled in the matter under consideration only by consulting every treaty that has entered into force, not simply treaties in force at the present time; this is a formidable undertaking. Accordingly, while the SCP appears to be unprecedented, supporting evidence derived from respected but secondary sources and persons familiar with developments in the area is not so conclusive as to be preclusive of a different result.

By way of a concluding comment in the matter of precedents, it is instructive, or so it seems, that the legislative record compiled in connection with several hearings on the Montreal Aviation Protocol No. 3, including the SCP, does not appear to supply any; the citation of precedent usually forms a point of departure in the legislative arena.

The second question elicits information regarding the effect of the Senate's advising and consenting to ratification of Protocol No. 3 on the power of Congress to legislatively revisit the SCP in the future either to reauthorize it or to revise it in some particular.

Several reasons support the conclusion that the entry into force of the SCP will not and, perhaps, arguably, could not, place the statutory underpinnings of the Plan beyond the reach of the lawmaking power of Congress whether to reauthorize it or to amend it in some regard. As previously indicated, Article 35A of Protocol No. 3 is neutral on the subject; in apparently studied language it neither establishes nor endorses any system of supplemental compensation but "recognizes that a party may establish within its territory a system to supplement compensation available under the Convention." Senate Executive Report 102–1 at 49. Except for several restrictions intended to insure that any system of supplemental compensation is truly supplemental and not a dodge to circumvent and augment the limits on carrier liability and also not a ruse to discriminate between carriers and among passengers, the SCP is strictly a matter of municipal discretion and concern and consequence. As such, the SCP does not fall within the compass of an international obligation which in certain circumstances Congress even in the exercise of its lawmaking power may not supervene without being in breach of international law and exposing the United States to remedies available to the injured party or parties for violations of international law. See, e.g., Rest. 3rd, Restatement of the Foreign Relations Law of the United States §901 et seq.

Less as a matter of right than as an exercise of power, Congress may pass laws which have an adverse, limiting effect on at least the domestic consequences of an international agreement. "Acts of Congress, treaties and other international agreements of the United States, and principles of customary international law, are all federal law * * *. An act of Congress and a self-executing treaty of the United States * * * are of equal status in United States law, and in case of inconsistency the later in time prevails. An act of Congress will also be given effect as domestic law in the face of an earlier international agreement of the United States other than a treaty, or a preexisting rule of customary international law * * * although a subsequent act of Congress may supersede a rule of international law or an international agreement as domestic law, the United States remains bound by the rule or agreement internationally * * *. A state cannot adduce its constitution or its laws as a defense for failure to carry out its obligation." Id. at §115.

In one of the earliest decisions involving the doctrine that laws and treaties are equal in authority and the later prevails, Justice Field observed that the "court is not a censor of the morals of the other departments of the government * * *." The Chinese Exclusion Case, 130 U.S. 581, 602 (1889).

Assuming for the sake of argument that the SCP falls within the scope of the international obligation pursuant to Protocol No. 3, it follows from the doctrine of equality of statutes and international agreements that Congress in all cases possesses the power, if not the right, to legislate with respect to the plan's statutory underpinnings. However, as previously indicated, the SCP seems for all but a few Protocol-related isolating and insulating purposes, confined to the jurisdiction of the party which establishes it. Indeed, these restrictions arguably provide additional evidence that the SCP is outside the scope of the Protocol.

Finally, lurking somewhere within the interstices of this question seems to be uncritical acceptance of the propriety of delegating away legislative power by international agreement, in the present circumstances, the power to enact laws that benefit the American traveling public by authorizing recovery of damages for death or personal injury. The state of the law concerning delegations permits raising the argument in the context under discussion, not its resolution.

Despite the absolute nature of the rule prohibiting delegations by Congress of its lawmaking power, the Supreme Court and the federal judiciary have effectively accepted them from an early date. See, e.g., The Brig Aurora, 7 Cr. 382 (1813) and Wayman versus Southard, 10 Wheat. 1 (1825). Also, despite some vacillation by the courts regarding the rationale, congressional delegations now are viewed as being permissible where governed by adequate "legislative standards" to guide administrative execution of the law, a term which includes effective fetters on discretion derived from all manner of sources, such as statutory specifications of acts to be declared, preambulatory statements of legislative purpose, and imputations of legislative purpose inferred from legislative and administrative history. See, Mistretta versus United States, 488 U.S. 361, 371–379 (1989).

The delegation jurisprudence has largely concerned legislative grants to executive and other federal officials and this is true of the most conspicuous case implicating foreign affairs. United States versus Curtiss-Wright Export Corporation, 299 U.S. 304 (1936). There the Supreme Court held that because the President has independent powers in the

field of foreign affairs, the standards requirement for congressional delegations to the President are not as exacting as in domestic affairs.

Although delegations to non-federal public and private entities have been sustained by the courts, see, e.g., Currin versus Wallace, 306 U.S. 1 (1939), and delegations to mixed domestic and foreign entities have been assumed in legislation, see, e.g., Panama Canal Act of 1979, as amended, 22 U.S.C. §3601 et seq., abdication by Congress of its lawmaking authority along the lines implied by the question concerning the effect of consenting to Protocol No. 3 because of its tie in with the SCP scheme, raises unresolved issues. The propriety of a delegation along these lines is at this time problematical at best. Delegating rulemaking and administrative functions and the abdication of the power to legislate on a matter involving the public welfare are arguably different issues.

The third question essentially asks if entry into force of Protocol No. 3 and implementation of the SCP as contemplated by the most recent report of the Senate Committee on Foreign Relations on the agreement impairs the nation's right to denounce the Warsaw Convention and subsequent Protocols at some future date. Executive Report 102–1.

As a matter of international law, neither the Senate's consent nor steps taken to implement an international agreement bear on the right of termination. (Note the emphasis on international law and thus implied exclusion of the domestic consequences of imposition by the Senate of a condition on advice and consent to ratification that affects the manner in which termination will be accomplished.) That law has been succinctly summarized as follows:

(1) The termination or denunciation of an international agreement, or the withdrawal of a party from an agreement, may take place only (a) in conformity with the agreement or (b) by consent of all the parties.

(2) An agreement that does not provide for termination or denunciation or for the withdrawal of a party is not subject to such action unless the right to take such action is implied by the nature of the agreement or from other circumstances.

Rest. 3rd, Restatement of the Foreign Relations Law of the United States §332.

The agreements in question provide for termination by the parties. Attention is directed to the report of the Senate Foreign Relations Committee for an explanation of the consequences for the Warsaw Convention and subsequent Protocols of the exercise of the right to terminate Protocol No. 3. Executive Report 102–1 at 51.

The following passages are essentially excerpts from a commentary prepared by this writer that appears in Treaties And Other International Agreements: The Role Of The Senate Of The United States, S. Prt. 98–205 at 159, 160, 161. Footnote references are omitted.

Insofar as domestic law and practice are concerned two non-controversial observations may be made with respect to the termination of an international agreement: first, as the official spokesperson with other governments, the President is the person who communicates the notice of impending termination; second, the termination of an international agreement is a political act, and accordingly, the courts do not terminate international agreements. However, whether a treaty to be legally as distinguished from effectively terminated requires conjoint executive-senatorial or executive-congressional action remains a live issue which the Supreme Court in Goldwater versus Carter, 444 U.S. 996 (1979), refused to resolve.

"The procedure by which, from the viewpoint of national law and practice, treaties may be terminated involves questions to be resolved in accordance with constitutional and related procedures in each country. The United States Constitution is silent with respect to the power to terminate treaties. The matter was not discussed in the debates of the Constitutional Convention in Philadelphia." Briefly, "while the Constitution tells us who can make, it does not say who can unmake them." As a consequence of the Constitution's silence in this regard, "there has been some confusion of doctrine and a variety of practice."

The actual practice whereby treaties have been terminated demonstrates considerable variation. In some cases treaties have been terminated by the President, in accordance with their terms pursuant to action by the Congress. In other cases action was taken by the President pursuant to resolutions by the Senate alone. In still others the initiative was taken by the President, in some cases independently, and in others his action was later notified to one or both Houses of Congress and approved by both Houses or the Senate. "No settled rule or procedure has been followed."

The fourth and final specific question asks whether, in light of the second condition to advising and consenting to ratification of Protocol No. 3 recommended by the Senate Committee on Foreign Relations and nullification in some manner of the SCP, the courts would compel the President to terminate it?

The mentioned second condition which, as in the case of two other recommended conditions, takes the form of a proviso, states "that the President shall give notice of denunciation of these Protocols by the United States if, at any time after their entry into force for the United States, he determines that a satisfactory supplemental compensation plan, as periodically reviewed by the Secretary of Transportation in light of new economic or other relevant circumstances, is not in operation for the United States, or that the best interest of the U.S. airline passengers are not otherwise served by continued adherence to these Protocols by the United States."

As indicated above, the courts do not terminate treaties on the familiar ground that foreign affairs-related matters generally are committed by the Constitution to the political branches. Accordingly, the subject is generally regarded as being political and therefore non-justiciable. "* * * a court will not ordinarily inquire whether a treaty has been terminated, since on that question 'governmental action * * * must be regarded as of controlling importance * * *." Baker versus Carr, 369 U.S. 186, 212 (1962). If the question of the continued effectiveness of a treaty arises in some allied litigation context, for example, extradition, the courts interpret political acts or silences to determine the answer to the question. See, e.g., Charlton versus Kelly, 229 U.S. 447 (1913). In that case the foreign party to an extradition treaty had materially breached it earlier, thus giving the United States grounds for terminating the agreement. When that party later sought extradition of an accused from the United States, the treaty's status became an issue. Although the prior breach by the now requesting state justified termination of the treaty by the United States, the Court effectively found executive actions at odds with termination and concluded that the treaty remained in force. "The executive department having thus elected to waive any right to free itself from the obligation to deliver up its own citizens, it is the plain duty of this court to recognize the obligation to surrender the appellant as one imposed by the treaty as the supreme law of the land and as affording authority for the warrant of extradition." 229 U.S. at 476. "Put another way, breach by a foreign government may render a treaty voidable at the option of the United States to be exercised by the President; if he chooses not to void it, the courts will give it effect." Henkin, Foreign Affairs and the Constitution at 419, note 138.

This issue now under consideration is not whether the federal judiciary will terminate an international agreement but whether the federal judiciary will conclude that Protocol No. 3 has lost its reason for being because the SCP has become inoperative and order the President to denounce it. As noted above, the second proviso recommended by the Senate Committee on Foreign Relations seems to require the President to denounce the Protocol in these circumstances; it calls for termination when the President "determines that a satisfactory [SCP] as reviewed by the Secretary of Transportation in light of new economic or other relevant circumstances, is not in operation for the United States".

Would the federal courts order the President to terminate Protocol No. 3 in the circumstances described by your correspondence, specifically 'invalidation of the SCP by a court of law or an abandonment of the SCP by the Executive Branch at some future date?" Frankly, this question does not admit of an easy answer. As previously intimated, constitutional issues involving foreign affairs, particularly big issues of competition between President and Congress, rarely come to court because of the twin hurdles imposed by the political question doctrine (i.e., case or controversy) and the absence of a person or persons with standing to raise the issue. See, e.g., the division among the justices occasioned by the challenge by some Members of Congress to President Carter's unilateral termination of the Mutual Defense Treaty with Taiwan: Goldwater v. Carter, 444 U.S. 996 (1979). The proviso in question leaves the determination that paves the way to denunciation to the President; it is when "he determines that a satisfactory supplemental plan * * * is not in operation for the United States." Moreover, an additional ground for denunciation (and, arguably, non-denunciation) is provided, that is, "that the best interest of U.S. airline passengers are not otherwise served by continued adherence to these Protocols by the United States." Although the proviso roughly specifies the criteria for review of the SCP by the Secretary of Transportation, specifically economic and other relevant circumstances, the grounds for the President concluding that a satisfactory plan is not in operation for the United States are largely left to his discretion. The breadth of discretion is seemingly as broad with respect to the alternative ground, namely a determination by him of whether continued adherence to the Protocols by the United States is in the best interest of U.S. airline passengers.

Would compulsory process be appropriate in the context of what appears to be a nonministerial or discretionary act? "The province of the court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have a discretion. Questions in their nature political, or which are,

by the constitution and laws, submitted to the executive can never be made in this court." Marbury versus Madison, 1 Cr. 137, 170 (1803). See Decatur versus Pauling, 14 Pet. 497, 516 (1840); Georgia versus Stanton, 6 Wall. 50 (1867); Mississippi versus Johnson, 4 Wall. 475 (1867); Kendall versus United States ex rel Stokes, 12 Pet. 524 (1838).

Baker versus Carr, 369 U.S. at 211, generally supports the traditional view that questions touching foreign relations are political questions because "resolution of such issues frequently turn on standards that defy judicial application, or involve the exercise of a discretion demonstrably committed to the executive or legislature; * * * many such questions uniquely demand single-voiced statement of the Government's views." At the same time, the majority opinion opens the door to "judicial cognizance" with regards to the termination of a treaty, for example, depending upon the presence or absence of "conclusive * * * governmental action." As previously noted, "if there has been no conclusive 'governmental action' then a court can construe a treaty and may find it provides the answer." 369 U.S. at 212. Construction of a treaty by the courts apparently is not confined to questions relating to its continued force and effect. Recently, for example, the Court has interpreted a treaty to answer a question regarding the issuance of an Internal Revenue Service administrative summons in certain circumstances. United States versus Stuart, 489 U.S. 353 (1989). In this light it is conceivable that a court may view the question presented by Protocol No. 3 and the second proviso under consideration as involving treaty construction free and clear of "conclusive * * * governmental action" and proceed to decide whether judicial invalidation or executive abandonment of the SCP meets the alternative standards that require the former's termination. A judicial finding embraced in a declaration along these lines arguably need not be enforced by process directing the President to terminate the Protocol. As in the case of the unconstitutional exclusion of a Member of Congress by the House of Representatives and the demand for the White House tapes and other materials in aid of a criminal proceeding, the court may make its finding and leave it to its coequal branch's sense of duty to carry out the law. Powell versus McCormack, 395 U.S. 486 (1969); United States versus Nixon, 418 U.S. (1974).

On balance, for reasons previously expressed concerning the implications of the political question doctrine in these circumstances and to the latitude seemingly afforded the President by the proviso, judicial intervention appears unlikely. In litigation involving the matter it would not surprise this writer to find the court citing the instance in 1966 when United States compensation-related concerns were accommodated just before the latter's pending denunciation became effective as a possible, if not likely, potential casualty of judicial intervention. It is the possibility of consequences of judicial action along these lines that lies at the heart of the political question doctrine, both in its constitutional and prudential aspects.

The question of standing to raise the issue of presidential failure to denounce Protocol No. 3 because the SCP has become inoperative or has been abandoned by the Executive Branch is a thorny one in these circumstances. Standing or the requirements that must be satisfied by a litigant challenging executive action or inaction on constitutional grounds is a complex area of federal law and the question of the standing of Members of Congress even more so. Its emergence in a foreign affairs context only adds to the complexity.

The justices did to address the issue on appeal in Goldwater versus Carter, 444 U.S. at 996, which as previously indicated involved a claim by some Members of Congress that the President's action in terminating the treaty with Taiwan had deprived them of their constitutional role with respect to a change in the supreme law of the land. After some initial doubts the trial court and the appellate court in Goldwater seem to have agreed that Senators, at least, had standing because the Senate has a constitutional right to vote on the President's proposed treaty termination with a one-third plus one vote. 481 F. Supp. 949 (D.C. 1979); 617 F. 2d 697 (D.C. Cir. 1979). Although the nature of the Senator's and Senate injury is slightly altered in the matter being considered here—in Goldwater it concerned nullification of the right to vote as distinguished from the duty of the faithful execution of the laws because of alleged presidential disregard of the second proviso—the distinction between the two arguably is without substantial difference since here nullification has retrospective as well as prospective consequences on Senate and Congressional actions. Note, however, that in vacating the judgment of the court of appeals and directing the dismissal of the complaint in Goldwater, the Supreme Court vitiated any precedential value of the earlier rulings.

In addition to addressing the foregoing four specific concerns, you ask for a consideration of the merits of preceding with administrative implementation of Protocol No. 3 on the basis of existing statutory authority for the SCP, or adopting new SCP implementing legislation and the implications of both approaches for separation of powers.

Congress revisits and reauthorizes statutory grants of authority for a variety of reasons, including extending them for an additional time, e.g., export controls, 50 U.S.C. App. §2401 et seq., defense production allocation authority, 50 U.S.C. App. §2601 et seq., broadening the scope of federal regulation and enforcement, e.g., reducing from 25 to 15 the number of employees that subjects an employer to equal employment opportunity requirements, 42 U.S.C. §2000e(b) and note, and, occassionally, to cut back federal jurisdiction when it is deemed desirable, e.g., reversing the Supreme Court decision extending federal jurisdiction to the interstate insurance business and returning it to state regulation, United States versus South Eastern Underwriters Assn, 322 U.S. 533 (1944), and the McCarran Act, 59, Stat. 33, 15 U.S.C. §§1011–1015. Instances of Congress providing a statutory basis for some theretofore administrative practice are likewise not unknown. e.g., the bid protest activities of the General Accounting Office, Competition in Contracting Act, 31 U.S.C. §3553d)(1). However, effective reenactment of a law that is not compelled by these and similar circumstances is less frequent. Indeed, the only recent parallel that comes immediately to mind is the Reagan administration's efforts in 1982 to legislate the tax treatment to be accorded private schools which discriminate in student admissions on racial grounds, a policy which had been in effect for 12 years. The proposal occasioned considerable controversy for a variety of reasons not the least being that "[m]ost members of Congress saw no need for the bill, believing such exemptions already were prohibited by law." 1982 CONGRESSIONAL QUARTERLY ALMANAC 397, 398. The Supreme Court one year later vindicated their belief. Bob Jones Univ. versus United States, 461 U.S. 574 (1983).

Leaving aside for the moment the negative implications of such a move for legislative efficiency and economy, several advantages may be argued on its behalf in the circumstances under consideration.

1. It would give the Congress a renewed opportunity to reconsider Protocol No. 3 and the SCP as well as a whole range of matters concerning the Warsaw Convention on Aviation.

2. It would enable the Congress to tailor the statutory underpinnings of the SCP to the specific needs and requirements of passenger liability under Protocol No. 3 rather than leaving it to administrative discretion and reliance on authorities, perhaps never intended for imposition of a ticket surcharge in order to fund a mandatory insurance program which is largely uncontrolled by the Warsaw Convention regime.

3. It would allow Congress to consider the advisability of affording the Secretary of Transportation a largely unbridled opportunity to unilaterally revise the surcharge in light of new economic conditions and other relevant circumstances. In the view of some persons this authority borders on the power to tax since it gives the Secretary effective, if not technically accurate, indefinite revenue enhancing power.

4. It would permit Congress to consider the advisability of establishing a precedent supporting administrative implementation of a treaty that could come back to haunt the Senate and the Congress. As matters now stand, many persons are persuaded that after three instances of largely uncontested presidential exercises, treaty termination is largely, if not exclusively, a presidential activity notwithstanding its implications for Supremacy Clause and treatymaking doctrine. The former gives laws and treaties equal status, arguably implying that treaties like laws may only be repealed or terminated by law; the treatymaking provision of the Constitution calls for conjoint action by the President and the Senate, arguably implying the need for similar cooperation in unmaking treaties.

5. It would enable the Congress to consider the advisability of abandoning fault as the standard of liability, an arguably radical departure from the traditional basis of tort liability.

Clearly, if the Senate should decide that legislative rather than administrative implementation of the Protocol is desirable, one of the immediate results of that decision would be to convert it to a non-self executing or executory treaty. See and compare the Treaty of Friendship and Cooperation between the United States and Spain which entered into force on September 21, 1976, subject to a Senate declaration, stating: "the sums referred to in the Supplementary Agreement on Cooperation Regarding Material for the Armed Forces and notes of January 24, 1976, appended to the Treaty, shall be made available for obligation through the normal procedures of the Congress, including the process of prior authorization and annual appropriations, * * * TIAS 8360; 27 UST 3005 (Emphasis added). That conversion, in turn, would leave the fate of the Aviation Convention and its presumed beneficiaries dependent on the uncertainties of the legislative process.

The drafting of the presumed implementing legislation calls for some care in order to avoid future difficulties, namely, whether to specify the amount of the surcharge and thus, relatively speaking, freeze it, or to del-

egate similar authority to an administrative official and in regards to the latter making clear whether the authority is revenue raising or the exaction of a fee. See e.g., National Cable Television Assn. versus United States, 415 U.S. 336(1974) (among other things, distinguishing between a tax and a fee). Although both when properly done pass constitution a muster, Ibid; Skinner versus Mid-America Pipeline Co., 490 U.S. 212 (1989), revenue raising measures unlike laws imposing fees must originate in the House of Representatives, U.S. Constitution, Art., §7, cl. 1. See United States versus Munoz-Flores. 110 S. Ct. 1964 (1990). See, also, Swearingen versus United States, 565 F. Supp. 1019 (D.C. Colo. 1983) (A treaty which creates an exemption from the Internal Revene Code, would be in contravention of the exclusive constitutional authority of the House of Representatives to originate all bills for raising revenue.) Moreover, unlike a fee which presupposes some relationship to the cost of benefit conferred, the grant of authority to an administrator to raise revenue, as previously indicated, has to be accompanied by legislative standards in order to survive being challenged as an unlawful delegation of policy origination. Skinner versus Mid-America Pipeline C., 490 U.S at 218 *et seq.*

The implications for separation of powers of the alternative approaches to implementing Protocol No. 3 seem largely to involve matters of perspective and preference. As the authority for the SCP is arguably in place, Senate consent to the Protocol could be regarded as confirmation of a conclusion to that effect.

Separation of powers is concerned with preventing the enhancement of the power of one branch of government at the expense of another. INS versus Chadha, 462 U.S. 919, 951 (1983). As one court has observed in another but not totally unrelated context, "[t]he people of the United States, in adopting the Constitution, granted the power to "lay and collect duties" and to 'regulate commerce' to the Congress, not to the Executive. * * * Nonetheless as * * * courts and comentators have noted, Congress, beginning as early as 1794 and continuing * * * [to the present time], has delegated the exercise of much . . . power . . . to the Executive." United States versus Yoshida Intern., Inc., 526F 2d 560, 571 inconsequential shifts do not do violence to the doctrine. Morrison versus Olson, 487 U.S. 654 (1988). Moreover, what Congress gives by way of authority it can always recover so long as it observes constitutionally prescribed lawmaking procedures. INS versus Chadha, 462 U.S. at 958. Accordingly, the Congress may alter the statutory underpinnings of the SCP in light of future developments or head off the need for lawmaking by conducting effective oversight of administrative activities relating to airline passenger recovery.

At least as an abstract or principled proposition, the adoption of appropriate implementing legislation tailored to the circumstances of the particular case in most situations accords with the doctrine of separation of powers. "There is unmistakable expression [in 'the records of the Convention and debates in the States preceding ratification' of the Constitution] that legislation by the national Congress be a step-by-step, deliberate and deliberative process." INS versus Chadha, 462 U.S. at 959.

Assuming that the Department of Justice and others who have concluded that existing laws support the proposed SCP are correct, the Congress in the present circumstances seems free to choose between either approach without doing manifest violence to the separation of powers.

RAYMOND J. CELADA,
*Senior Specialist in American Public Law.*

EXHIBIT 2

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
*Washington, DC, August 1, 1991.*

Hon. Samuel K. Skinner,
*Secretary, Department of Transportation, Washington, DC*

DEAR MR. SECRETARY: As you know, I wrote the American Law Division [ALD] of the Congressional Research Service on June 24, 1991, requesting options on issues relating to the proposed ratification of the Montreal Protocols and the adoption of a supplemental compensation plan [SCP].

For your information, I am enclosing a copy of the ALD response. As you have acknowledged in the past, the proposed SCP is unprecedented in nature. As the ALD opinion indicates, conditioning Senate consent to ratification on agency action instead of implementing legislation also seems unprecedented. Nonetheless, the ALD opinion suggests that the Senate is "free to choose between either approach."

I recognize certain advantages in the approach recommended by the Administration and the Senate Foreign Relations Committee, relying on the existing authority of the Department of Transportation. If necessary, Congress would still retain the power to enact statutory authorization for the SCP at any later time. However, I still am concerned about the unprecedented nature of the SCP and the implications of a choice not to rely on implementing legislation. Under the current proposal, there is a risk of an absolute limitation on recoveries being created if the Protocols are ratified and the SCP is subsequently overturned in a legal challenge. Under such circumstances, it is my understanding that the $130,000 limitation would apply absolutely until either Congress enacts remedial legislation for a SCP or the President denounces the Protocols.

I would be interested in the Administration's suggestions for mitigation of concerns or risks with regard to the SCP, as well as any clarification of potential circumstances which might warrant denunciation of the Protocols. I also recommend that our staffs consult with the Foreign Relations Committee and other interested parties to address such issues.

I appreciate your attention to my concerns with regard to the Protocols.

Best personal regards.

Sincerely,

GEORGE J. MITCHELL.

## LEGISLATION TO REPEAL FEDERAL EXCISE TAX ON LUXURY BOATS

Mr. MITCHELL. Mr. President, I am today adding my name as a cosponsor to legislation introduced by Senators BREAUX and CHAFEE to repeal the luxury excise tax on boats. I do so because I do not believe the new luxury excise tax will fulfill its basic objectives. It will never raise more than a minuscule amount of revenues to fund the Federal Government and it is a negligible source of revenue from wealthy Americans. Meanwhile, it appears to be having a negative effect on the boat industry at a cost of American jobs.

The Federal excise tax on luxury boats was enacted last year as part of the deficit reduction agreement negotiated between the White House and Congress. The luxury tax was originally included in those discussions as a means of providing a fairer distribution of burdens from deficit reduction—to provide balance to a tax package full of consumption taxes that would fall heaviest on the middle class. Although that tax bill ultimately became fairer as income tax changes on the wealthy were included, the luxury excise tax provisions survived intact. We were, however, able to increase the threshold price of boats subject to the tax.

Since enactment of the boat excise tax, I have heard from scores of people in Maine and across the Nation who work in the boat industry and are opposed to the luxury tax. Many of them have either lost their jobs, had their hours cut back, or their salaries reduced. They are angry because they believe their industry has been undermined.

Boat manufacturers are now experiencing one of their worst periods ever. Sales of luxury boats are down almost two-thirds from the average over the last 4 years. Undoubtedly, these problems result from the national recession which has severely depressed sales. But sales are also being lost due to the new luxury excise tax.

At my request, the Senate Finance Committee held a hearing last month on the luxury boat excise tax. The committee heard from boat manufacturers and sellers about the condition of the industry and the impact the tax is having on their operations. The view from industry was unanimous that the luxury tax is turning away buyers and having a negative effect on boat sales.

Although economic analysis may suggest that purchasers of luxury boats are minimally influenced by price increases and therefore sales will not fall much due to the luxury tax, that is not the experience of the industry today. Every manufacturer reports buyers walking away as a result of the tax. The reason is not hard to understand. Boat buyers are willing to pay higher prices that reflect higher values in a boat but they are much less willing to pay higher prices resulting from Government excise taxes. Such taxes create no value in the boat but are simply a payment to the Government that can never be recaptured. The evidence indicates that purchasers of luxury boats are resistant to the 10-percent-luxury tax and are refusing to buy boats.

The welfare of luxury boat buyers is not our concern; rather, our concern is the well-being of the many thousands of Americans who work in the boat manufacturing and sales industry. It is their jobs we care about and wish to save with repeal of this tax.

There are thousands of Maine citizens employed in the boat industry,

many of them highly skilled artisans building some of the finest boats in the world. Unfortunately, many of them have lost their jobs in recent months and others face the threat of layoff. They are particularly concerned about being unemployed in a Maine economy that is in severe recession.

Maine has a long and proud tradition building boats, from the small backyard boat builder to major companies with internationally known names in sailing. Many of them are in desperate straits today and they are pleading for repeal of the luxury boat tax. They are not looking for a handout, a tax subsidy, or Government loan. All they want is the removal of a tax on their industry.

I believe in a progressive system of taxation where the most fortunate, highest income earners pay a greater share of tax. But luxury excise taxes have almost nothing to do with that principle. Fair taxation requires fair income taxes, not consumption taxes on luxury goods like boats with a small market and few purchasers. The luxury excise tax on boats is projected to collect only about $3 million this year and about $40 million by 1993. That is a relatively small tax on wealthy Americans.

The luxury excise tax on boats should be repealed, not on behalf of those individuals fortunate enough to be able to purchase high priced boats, but on behalf of the thousands of Americans who work in the Nation's boatyards. I intend to work with Senators BREAUX, CHAFEE, and others to repeal the luxury excise tax on boats.

## COSPONSORSHIP OF S. 649, A BILL TO REPEAL THE LUXURY TAX ON RECREATIONAL BOATS

Mr. COHEN. Mr. President, I am joining as a cosponsor today of S. 649, a bill to repeal the luxury tax on recreational boats.

I am deeply concerned about the condition of the boat building and related industries in my State of Maine. Since enactment of the new luxury tax, I have heard from many representatives of, and workers in, the boating industry, both in my State and across the country, on the serious toll that this new tax is taking on their industry. The pleasure boat industry has experienced declining sales over the past 2 years due to the economic recession, and this new tax is sharply exacerbating the industry's decline.

A recent report prepared by the staff of the Joint Economic Committee confirms that the luxury boat tax will result in massive job losses nationwide in boat manufacturing and related industries. This report estimates that, even using conservative estimates, over 7,600 jobs will be lost this year directly because of the 10-percent excise tax on boats. Boat builders and employers in boat related industries in my State of Maine are already feeling the devastating effects on lost boat sales, in large part due to the new excise tax. The Hinckley Company in Southwest Harbor, ME, for example, has been forced to lay off at least 10 percent of its work force. As the second largest employer in Hancock County, reductions at Hinckley have taken a great toll on this part of my State.

The case is certainly not unique: Every Maine boat builder has reported worker layoffs and significant slowdowns in production due to this tax. Customers are backing out of contracts once they realize that a tax is being applied to their boat purchases, thus affecting even those sales that were generated before the tax went into effect.

These job losses in my State are particularly difficult to bear since the workers who lose their jobs due to the slowdown often have no transferable skills, and are unable to find other jobs in the State. The demise of the boating industry will quickly have a wide, ripple effect on other parts of the Maine economy, from the State government which depends upon revenues from new and used boat sales, to the hotels, restaurants, marinas, and other Maine industries that rely on a thriving recreational boat industry for their survival.

The recent staff report of the Joint Economic Committee also provides important evidence to support a concern that boat builders, their workers, and I have shared for some time, namely, that the luxury tax will not yield the $3 million in revenues that were estimated to be gained by the tax when it was included in the Budget Reconciliation Act of 1990. In fact, this report estimates that the luxury tax on boats will actually cost the Government $18.2 million in lost income taxes, employer and employee FICA contributions, and unemployment outlays in fiscal year 1991. In other words, this tax will cost the Government over six times the amount of money that it was supposed to raise.

To me, this is convincing evidence that the luxury tax on boats is costing far more than it is worth, and should be repealed.

I would further point out that this tax is not meeting the other goal for which it was intended, that is, to impose a greater portion of the tax burden on high-income taxpayers. It is abundantly clear that this tax will not be borne solely by wealthy taxpayers. These people often have the financial means to pay the 10-percent tax, to choose to spend their money on some other item that is not taxed. Instead, the real burden of this tax falls on the hardworking men and women of the boating industry who are losing their jobs.

Mr. President, I recognize that some may misconstrue efforts to repeal this tax as simply an attempt to help rich taxpayers. Nothing could be further from the truth. I, for one, fully support proposals to make wealthy taxpayers pay more in Federal taxes. During the Senate debate on the budget reconciliation bill that contained this excise tax, for example, I supported amendments to increase the tax burden on upper-income taxpayers, and, ultimately, I did not support the final bill because I believed that the deficit reduction package, as a whole, disproportionately hurt low- and middle-income taxpayers, and did not place enough of the burden on the wealthy. A luxury tax on recreational boats, however, is not simply a tax on the wealthy, but rather threatens severe, harsh consequences on an already troubled industry.

The many comments of concern that I have received from my constituents in these industries, the recent staff report of the Joint Economic Committee, and the compelling testimony of industry representatives at hearings before the Senate Finance Committee have more than convinced me that the luxury tax on boats must be repealed. I hope that the Senate takes swift action to pass S. 649.

## FALL CONSIDERATION OF APPROPRIATIONS FOR INTERNATIONAL FINANCIAL INSTITUTIONS

Mr. KASTEN. Mr. President, when Congress returns from the August recess, one of the matters that we will be considering is the foreign assistance appropriations bill. Among the specific requests that we will have to consider are appropriations for the World Bank, the Eastern European Bank, and the quota increase for the International Monetary Fund.

Specifically, we are being asked to provide $2,337,544,000 in paid in and callable capital for the World Bank, $233,400,000 in paid in and callable capital for the Eastern European Development Bank, and $12,000,000,000 for the quota increase of the IMF. The three requests total approximately $14,550,000,000 of taxpayers' funds. Last year, we provided approximately $3,240,000,000 as there was no IMF request.

Mr. President, my colleagues may be interested in reading an article which appeared in this morning's paper regarding the salaries at these institutions. According to the article, the $290,000 salary received by the President of the Eastern European Bank for Reconstruction and Development, is generating a snowballing increase of salaries, not only for the heads of these institutions, but, of course, for all of the people under them. It is interesting to note that the Eastern European Development Bank has yet to make a loan.

Mr. President, this will certainly be an issue as we consider the appropriations for these institutions, and so I ask unanimous consent that this article be inserted in the RECORD at this point.

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

[From the Washington Post, Aug. 1, 1991]

GALLIC RIVALRY SPARKS A PAY RAISE—AND A ROW—AT WORLD BANK

(By Hobart Rowen)

When Lewis T. Preston takes over as head of the World Bank in September, he will collect a salary of $290,000 a year, $65,000 more than current President Barber B. Conable.

At first impression, it might appear that Jacques Attali, who also earns $290,000 a year as president of the European Bank for Reconstruction and Development, is responsible for the 28.8 percent raise, for which Preston didn't ask and about which he actually is a bit embarrassed.

If the trail of how the raise came about is followed carefully, however, the footprints would go not to Attali's London office, but across the street to the 12th-floor office of Attali's fellow Frenchman, Michel Camdessus, head of the International Monetary Fund, who will get the same raise.

By custom and practice, the salaries of the heads of the World Bank and the IMF—currently $225,000 a year—are linked, and therein lies a tale of Gallic intrigue.

What's more, the higher salary for the top officials, if approved as expected at a World Bank board meeting today, will touch off a boost in the pay scales throughout the two organizations, and likely will bring renewed complaints from Congress that the IMF and World Bank staffs are overpaid.

The decision to increase the World Bank president's salary to $290,000 has caused a bitter row inside the bank. Almost half of the member nations, including the United States and most of the larger powers, are expected to vote against it.

The campaign for higher salaries according to sources familiar with the issue, began when Camdessus discovered that Attali's pay as head of the new European Bank for Reconstruction and Development had been set at the British pound equivalent of roughly $290,000.

Camdessus, according to sources, views Attali's job, which deals with economic development and change in Eastern Europe and the Soviet Union, as having less stature than the IMF position, and so argued that his salary should be at least as high as Attali's.

"The French executive director at the IMF appointed himself as Camdessus's agent, and it got less pleasant as things moved along," said a source.

In support of the idea of a big pay boost, according to sources, spokesmen for Camdessus also circulated a review of the compensation for the governor of the Bank of France, who receives an even bigger compensation package.

In a "normal" situation, one official said, the World Bank's board would have negotiated a new five-year contract with Preston, allowing for a cost-of-living boost over Conable's $225,000 salary.

Sources said that an increase of 16 percent would have covered inflation since the last raise three years ago and that 20 percent would have followed suit.

"But in this case, the follower played the leader," a source said. The vote in favor of "Camdessus's increase"—as one put it—is expected to carry at the World Bank primarily because its smaller developing country members always hesitate to vote against salary increases for the management, fearing that if they do, they won't fare well at the loan window.

At the World Bank and the IMF, a "cap" on salary levels throughout the organizations is maintained by designating two-thirds of the president's and managing director's pay as salary, with one-third as an allowance, for which accounting is not necessary. All of the compensation is tax-free for foreigners and tax-paid for Americans.

U.S. opposition to increasing Preston's salary to match Attali's is compromised somewhat because Attali's high salary is a product of its determination that the European Bank for Reconstruction and Development should focus on private-sector development.

The new organization believed, therefore, that it needed to establish a scale of salaries—the paycheck for the top man sets the ceiling and scale for the intermediate ranks—equivalent to those paid by private companies.

"So the EBRD, when setting Attali's pay, looked to what was being paid in Wall Street, not to the IMF, World Bank or U.N. agencies," an official said.

## S. 1220—THE NATIONAL ENERGY SECURITY ACT

Mr. JOHNSTON. Mr. President, I rise today to address a subject on which controversy runs high and emotion runs deep. That subject is the Arctic National Wildlife Refuge. The issue is whether the Coastal Plain, a 1.5 million acre portion of this 19 million acre refuge, should be made available for oil and gas leasing.

Mr. President, the Coastal Plain of ANWR is seen by many as a place of great beauty. It is a place of vastness, a place where the land stretches farther than the eye can see. It provides important habitat for muskoxen, brown bears, polar bears, wolverines, and a multitude of migrating and other birds. It is a place where, in the summer months, the porcupine caribou herd roams, and rainbows arch over the Beaufort Sea.

But a national treasure is also believed to underlie the surface of the Coastal Plain. That national treasure is oil—huge quantities of oil—so much oil that if the mean estimate of recoverable oil is found, the Coastal Plain would represent the third largest oil field ever discovered in the United States, second only to Prudhoe Bay and the east Texas field. Simply put, the Coastal Plain of ANWR represents the most highly prospective onshore oil and gas region remaining in the United States.

Mr. President, the question posed, then, is should the Coastal Plain be made available for oil and gas leasing. If doing so would destroy the 19 million acre Arctic National Wildlife Refuge, as some suggest, then clearly the answer to that question would and should be "no." But that is not the issue. The Coastal Plain can and should be developed in an environmentally sound and sensitive way that does not despoil the wildlife and other environmental values of ANWR. Not only can this be done, but the provisions of S. 1220, the National Energy Security Act of 1991, ensure that it will be done.

Mr. President, the case for authorizing oil and gas leasing in ANWR is as compelling as it is straightforward.

First, oil and gas activity would be limited to only a small portion of the refuge—the 1.5 million acre Coastal Plain, an area some 30 miles wide by 100 miles long. Absolutely no oil and gas activity would take place on the rest of the 19 million acre refuge. In fact, almost half of the refuge, approximately 8 million acres, has already been included in the National Wilderness Preservation system. This includes 450,000 acres of the Coastal Plain region between the Aichilik River and the Canadian border.

In addition, the technology and the environmental sensitivity of oil field development in the Arctic have evolved steadily in the 20 years since the oil and gas facilities at Prudhoe Bay, directly west of ANWR, were designed and constructed. Given these advances, and with the environmental safeguards that have been built into S. 1220, development can take place on the Coastal Plain in an environmentally sound manner without lasting effects.

It is a serious misconception that oil leasing and development would destroy the habitat functions of the Coastal Plain. In reality, full leasing, development, and production from three oil fields, for example, would affect less than 1 percent of the area's land surface by both direct habitat alteration and by indirect effects such as road dust or local impoundments of water along a road. Ninety-nine percent of the area would remain untouched; and the area's habitat will not be altered sufficiently to affect the size, growth rate, or regional distribution of fish and wildlife populations. The area will continue to be used by caribou for calving and will continue to provide habitat for polar bears, brown bears, wolves, muskoxen, and millions of birds.

The only significant change on the Coastal Plain would be aesthetic. If oil is discovered, widely spaced roads, pipelines, drilling structures, and support facilities would be visible on the Coastal Plain. Facilities would be removed and graveled areas rehabilitated when production ceased. During the years of exploration and production, the Coastal Plain region will still support wildlife, provide recreational opportunities, and be home to the Inupiat Eskimo.

S. 1220 imposes the most strict environmental safeguards applicable to any Federal mineral leasing program. The legislation requires that any oil and

gas activities be undertaken so as to result in "no significant adverse effect on fish and wildlife, their habitat, and the environment" and requires the application of the "best commercially available technology" for oil and gas exploration, development and production on all new operations, and whenever practicable, on existing operations.

The bill requires stringent regulations to protect the Coastal Plain's fish and wildlife resources, subsistence users, and the environment, including seasonal limitations on exploration, development, and related activities, use of ice roads and ice air strips, consolidation of facilities, specific regulations on disposal of wastes, reclamation requirements, air and water quality requirements, and many others. Moreover, all Federal and State environmental laws and standards will apply to oil and gas activities on the Coastal Plain.

In addition, S. 1220 requires that leasing on the Coastal Plain be undertaken in phases, with no more than 20 percent of the area—300,000 acres—leased in any one sale. Sales are spread out over several years. Three years must elapse between the first and second lease sales and a 2-year period is required between any subsequent lease sales. These timeframes were incorporated into the bill to help ensure that environmental and wildlife effects can be monitored and assessed.

S. 1220 establishes a reclamation fund of up to $50 million, financed by a fee on Coastal Plain production, to be used to reclaim the Coastal Plain, other North Slope Federal lands, and related lands, in the event that they are not otherwise properly reclaimed.

Under S. 1220, the Secretary of the Interior has discretion to exclude from leasing areas deemed to be of particular environmental sensitivity. In other areas where leasing occurs, exploration and development can take place only pursuant to exploration and development and production plans which would be subject to public notice and comment prior to any Secretarial determination of approval. Moreover, in instances where a lease has been issued and it is subsequently determined that oil and gas activity is likely to result in significant adverse effects to fish and wildlife, their habitat or the environment, the Secretary is authorized to cancel the leases.

Mr. President, the environmental safeguards incorporated into S. 1220 will accord the highest level of protection to the fish and wildlife and the environment of the Coastal Plain. The U.S. Fish and Wildlife Service has repeatedly stated that the wildlife values of ANWR can and will be protected under S. 1220.

The vegetation and wildlife inhabiting the Coastal Plain are well adapted to the extreme Arctic environment. Biological evidence does not support the popular notion that wildlife and plants in the region are fragile things, living on the edge of survival. After a decade of study, there is no evidence that oil development at Prudhoe Bay has adversely affected wildlife. The central Arctic caribou herd uses Prudhoe Bay and the surrounding area for calving. This herd has grown from 3,000 to 18,000 animals since oil development activities began at Prudhoe Bay in the early 1970's. The caribou live alongside the structures related to oil and gas activity, such as roads, pipelines, and drilling pads, with no ill effects.

While it is true that the Porcupine caribou herd uses a portion of the Coastal Plain for 6 to 8 weeks each year, it is not true that this area contains core calving areas critical to the survival of the 180,000 animals comprising the herd. In the first place, the herd calves throughout a huge expanse of territory in Canada and Alaska, including portions of the Arctic National Wildlife Refuge. In some years, probably as a result of snow conditions or the presence of predators, only a very few caribou calve in the Coastal Plain at all. In other years, there is a higher concentration of calving in certain areas of the Coastal Plain. But the best estimates available indicate that in 13 of the 19 years of record—1972–90—less than one-fifth of the herd's pregnant cows calved in these so-called core calving areas located in the upper Jago River drainage. In fact, a majority of the caribou cows are thought to have calved in these areas only once during this 19-year span. The widespread and annually variable distribution of calving suggests that no one small portion of this huge calving area is critical to maintaining the viability of the Porcupine caribou herd.

Finally, the human activity resulting from oil production would not be new to the Coastal Plain. Although human presence in the Coastal Plain region has been relatively light, there has been, and continues to be, evidence of man in the area. There has been three DEW line stations—one of which is still active—there is a Native village, Kaktovik, which has been relocated in the area three times in recent history, and there has been, and continues to be considerable subsistence activities in the area.

Mr. President, I turn now to the crucial importance to our Nation of the oil underlying the Coastal Plain. For the foreseeable future, oil will remain a critical fuel for the United States and other industrialized nations. Currently, the United States consumes 17 million barrels of oil per day. The Department of Energy projects that under current policies, this will increase to almost 23 million barrels per day in the year 2000, a rise of 33 percent. At the same time, domestic production will decline, resulting in a significant increase in foreign oil imports. DOE projects that domestic production will fall from today's level of 9.5 million barrels per day to 7.8 million barrels per day in 2010, a decrease of 18 percent.

Imports of foreign oil will more than double by the year 2010, making our Nation dependent on foreign oil for nearly two-thirds of our oil needs. This level of import dependence is dangerous for our country. Oil imports currently comprise half of our burgeoning trade deficit and are projected to quadruple by the year 2010. More significantly, as the Persian Gulf war tragically demonstrated, oil is an important strategic resource, and the struggle to control that region's vast oil reserves can disrupt the delicate balance of peace in the Middle East. We should all be mindful that prior to the Iraqi invasion of Kuwait, 25 percent of our imports came from the Persian Gulf, and 50 percent came from nations belonging to OPEC.

According to an analysis by the Department of Energy, S. 1220 would make major strides in addressing this situation. The efficiency and renewable energy provisions of the bill would help to stem the surge in our oil consumption. Rather than oil production plummeting by 18 percent between now and 2010, production would increase by 21 percent, an increase attributable in part to future production of oil on the Coastal Plain of ANWR.

Over the past 2 weeks, I have addressed the many subjects covered by S. 1220, which presents a comprehensive approach to energy policy. These range from initiatives in energy efficiency, renewable energy, and an extensive alternative fuel fleets program, to natural gas regulatory reform, corporate average fuel economy standards for motor vehicles, research and development, and many others. However, as S. 1220 reflects, I firmly believe that any credible energy policy will have to consider energy development as well as energy efficiency, renewable energy, and other initiatives.

United States oil imports are so massive, and the use of oil is so ingrained in our economy, that a substantial demand for oil will exist for the foreseeable future—certainly well into the early decades of the 21st century. This conclusion remains firm in the face of even the most optimistic assumptions about increases in energy efficiency and the substitution of alternative fuels. These policies alone will not suffice. Unless domestic oil production is encouraged and pursued throughout the necessarily long transition period during which the technologies to reduce oil use are being phased in, oil imports will continue to rise, and rise significantly.

By any measure, the Coastal Plain of ANWR represents the primary prospect for domestic onshore oil and gas exploration in the United States. The oppo-

nents of opening the Coastal Plain argue that the amount of oil at stake is not significant, that it is only a 200-day supply. However, a single field large enough to supply this country with all of the oil it consumes for 200 days represents a huge reservoir of oil. Eighty percent of all onshore oil fields discovered in the lower 48 States over the last 100 years have contained less than 1 day's supply.

The mean estimate of oil thought to be economically recoverable from the Coastal Plain of the ANWR is 3.6-billion barrels. The range of estimated economically recoverable reserves runs from 400-million barrels to over 9-billion barrels. The probability of discovering economically recoverable oil has been estimated by the Department of the Interior at 46 percent. The oil industry routinely considers probabilities of discovery in the range of 10 percent worth the payment of substantial bonuses for the right to explore for oil.

In addition to the benefits to the country provided by the oil itself, the Federal Treasury will benefit also. The Federal share of oil and gas leasing revenues would be significant and could provide a substantial new funding source for energy-related programs and projects designed to further enhance the Nation's energy security and reduce reliance on imported oil. The CBO has estimated that two lease sales in the Coastal Plain are likely to result in bonus bids to the United States approaching $1.5 billion. Should oil be discovered and produced from ANWR in significant amounts, a steady stream of royalty income will also accrue to the Federal Treasury for many years to come. S. 1220 earmarks all ANWR revenues for use in funding projects relating to energy efficiency and conservation, energy efficiency in transportation, research and development, fossil energy, including clean coal technologies, and oil and gas extraction, electricity, and renewable energy.

Mr. President, oil and gas development on the Coastal Plain is a step that must not be postponed any longer. Under the best case, it will take at least 10 years before commercial production could begin. By the year 2009, production from Prudhoe Bay, which currently accounts for nearly 25 percent of our domestic oil production, is projected to decline to approximately 300,000 barrels per day, the minimum level needed to operate the trans-Alaska pipeline system [TAPS]. If we continue to delay exploring for oil on the Coastal Plain and developing what we find there, the TAPS could be forced to shut down, and we will have lost our ability to transport Alaskan oil to waiting consumers.

When Congress enacted the Alaska National Interest Lands Conservation Act in 1980, we declined to designate this portion of ANWR as wilderness and specifically reserved for ourselves the decision on whether that area should be made available for oil and gas leasing. We directed the Secretary of the Interior to study the area and to make recommendations on whether to allow oil and gas development. In 1987, the Secretary recommended that oil and gas development be allowed to take place. Since that report was issued, the Energy and Natural Resources Committee has conducted 11 hearings, built a thorough written record on this issue, and voted on three separate occasions to proceed with oil and gas leasing. President Bush has also recommended that this area be made available for oil and gas leasing.

It is now time for us to exercise our responsibilities and make a decision with respect to oil and gas development on the Coastal Plain. The experts have undertaken extensive scientific study. They assure us that leasing and development can occur in an environmentally sound manner. Under S. 1220, the caribou, bears, muskoxen, wolverines, and birds can and will be protected. Our Nation can have the benefit of the oil from ANWR and still preserve the beauty and the vastness of the refuge.

## "PASSING THE TORCH" AT THE WESTERLY SUN

Mr. PELL. Mr. President, I rise to share with my colleagues news of an excellent family newspaper tradition that—I am happy to say—will continue to yet another generation at the Westerly Sun in Westerly, RI.

Earlier this week, Charles W. Utter, 73, and his brother, George H. Utter, 69, announced their retirement as copublishers of the daily newspaper and the succession of their sons to top management positions.

Both brothers, who have been copublisher since 1976, passed along the newspaper to Nicholas and Robert Utter—the latest generation of leadership in a line that goes back to when the Utter family first began publishing the Sun almost a century ago.

George's son, Robert Utter, 37, announced the transition by telling the newspaper's employees: "Welcome to the beginning of a new era, a new generation in the life of the Utter Company and the Westerly Sun."

The newspaper quoted Robert as saying he and Nicholas will be "business partners," and that they decided between them to drop the copublishing approach and split the responsibilities "as fairly and cleanly as possible."

Besides serving as editor, Robert will be president of the Utter Co. Nicholas will be publisher of the Westerly Sun and vice president, secretary, and treasurer of the company.

I want to take this opportunity to wish the Utters, both Charles and George, well and I know that I am expressing the views of many Rhode Islanders when I add my thanks for a job well done.

I also want to congratulate their successors, Robert and Nicholas, and to wish them all the best. I am sure they will continue the long and excellent newspaper tradition of their family—to the benefit of their readers and the community.

Mr. President, I ask unanimous consent that two articles about the Westerly Sun be printed in the CONGRESSIONAL RECORD.

"The Sun Co-publishers announce retirement," the Westerly Sun, July 31, 1991.

"New generation of Utters takes over Westerly Sun," the Providence Journal, August 1, 1991.

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

THE SUN CO-PUBLISHERS ANNOUNCE RETIREMENT

(By Deborah Fitts)

WESTERLY.—The nearly-century-old Westerly Sun changed hands this morning, but it was all in the family: co-publishers Charles and George Utter stepped down in favor of their sons Nicholas and Robert Utter, who will serve as publisher and editor respectively.

In an unusual company-wide meeting called at 8 a.m., Robert Utter, 37, told a crowd of employees gathered in The Sun's mailing room, "Welcome to the beginning of a new era, a new generation in the life of The Utter Company and The Westerly Sun."

He and his cousin Nicholas represent the fourth generation of leadership since the Utter family first began publishing The Sun 98 years ago in the same building on Main Street where it is printed today.

The 10-minute meeting was marked by a brief, tearful farewell from Charles Utter, 73.

Under his father, George B. Utter II, Charles came to the paper as summer help 58 years ago. He started full-time upon his return from World War II, and became editor and business manager upon his father's death in 1955.

He became co-publisher in 1967.

"Forty-five years is a long time," Charles Utter said, voice breaking. "I've enjoyed every minute of it."

He wished his son Nicholas and nephew Robert "the best of luck." Then in his trademark brusque fashion he concluded, "Don't read my lips; read my column in tonight's paper."

George, who began as a reporter with The Sun in 1948, set a lighter tone by recalling family members going back to his great-grandfather in 1892 who literally died in the traces.

"It's a pleasure to be able to be alive and be thrown out," he said.

He cited as the biggest change during his decades the switch to offset printing, in 1971, and added, "If my father came back here he wouldn't know his way around."

George, 69, became business manager in 1957. He joined his brother as co-publisher in 1976. He is also stepping down as president of The Utter Company, parent organization of The Westerly Sun and the Sun Graphics commercial printing division.

Both men received rounds of applause from the 40-plus employees present.

In an interview afterwards, Robert said the most significant change under himself and

Nicholas will be the formation of a five-member board of directors, to include the two of them and three from outside the company.

It will be the first time that a leadership role will be in other than family hands, Robert said.

While the board, which will meet quarterly, will be advisory in nature, it will "help make those major decisions" regarding the company's product, marketing, and investment, he said.

"It really has to do with the traditional understanding that outsiders bring new ideas—so we won't be so isolated," Robert said.

The three outsiders will be chosen by Robert and Nicholas, "but we're not choosing directors who will say yes to us; they will serve the community."

The Utter Company stock will remain family-held. Charles, George, Robert and Nicholas hold voting shares, while Robert's two sisters and Nicholas's two brothers hold non-voting shares.

All voting shares will be placed in a "voting trust" controlled solely by Robert and Nicholas as trustees, Robert said.

Efforts to effect the transition have actually been under way for eight years, according to Robert. The trail was rough at times, as changes in tax laws upset their plans and family members clashed on occasion over control of the company.

But Robert said in the end the transition was "amicable," if a sad time for the two retirees.

"After 40-plus years of control they agreed it was time for the next generation to take over," he said. "But for the guys who have devoted their lives to The Utter Company it was a very difficult and emotional decision."

While Robert and Nicholas will be "business partners," Robert said, they decided between them to drop the copublishing approach and split the responsibilites "as fairly and cleanly as possible."

Besides serving as editor, Robert will be president of the company. Nicholas will be publisher of The Sun and vice president, secretary and treasurer of the company.

Robert began at The Sun as a general-assignment reporter in 1980. He moved into management in 1984.

The paper changed dramatically in 1989 when Robert created an editorial board made up of himself, Nicholas and City Editor Donald Lewis. The editorials on Page 4 have radically changed The Sun's longtime image as a conservative, Republican paper.

"I think the readers would describe it as a liberal point of view, but I would describe it as a humanist point of view," Robert said.

He added, "We're very conservative on some issues—fiscal and labor—but liberal on social and human issues. We defy the labels."

As for party leanings, he said, "We're no longer a partisan newspaper."

Nicholas, 43, started with the company in 1974, working with Sun Graphics. He became general manager of Sun Graphics in 1977 and has also assumed management responsibilities with the newspaper in recent years.

Robert said he will look for "a rededication" on the part of the staff to serving the community, which he said has always been the paper's strength. "We will be going to the readers and finding out more clearly what they want,'" he said. "The readers always want to feel the paper is theirs."

Nicholas said he plans to establish a readership committee to get more feedback from the community. And he wants to improve communications with advertisers, to "find out from them what we can do to help them sell their products."

Boosting advertising will be a key goal, Nicholas said. Typical of New England dailies in the recession economy. The Sun's advertising lineage—the main source of income—is down 20 percent from last year.

Measures to cut costs have resulted in a decline of staff from an all-ime high of 100 two years ago to 83, as a result of attrition and early retirement. Utter family members took a 10 percent salary cut last year, and employees have gone two-and-a-half years without a pay hike.

However bonuses will be awarded in August as the company moves to share a recent "small profit" with the staff, Robert said.

Circulation, at around 13,000, was virtually unaffectd by a hike in the newsstand price from 35 cents to 50 cents one year ago. The change succeeded in its goal of stimulating subscription sales, Robert said.

In retirement, Charles Utter said he is tentatively planning a trip to visit his son, an Army colonel stationed in El Salvador, this fall. His dream is to travel down the Amazon River.

George Utter said he will pursue his interest in history by organizing the company's files in a new office over the Blue Mitten, a building the company owns next door to its main office. He is also working on a reprint of a company publication on the '38 Hurricane.

The family entered the newspaper business in Westerly in 1857, with the purchase of the failing "Literary Echo." The Utters launched the "Narragansett Weekly" in 1858, and The Sun in August 1893.

Robert and Nicholas represent the sixth generation of Utters in the printing business, and the fifth involved in newspapers.

The mansard-roofed brick building at 56 Main St., built by John Herbert and George Benjamin Utter in 1876, is thought by the family to be the oldest building in continuous use for a newspaper in the country, and is on the National Register of Historic Places.

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NEW GENERATION OF UTTERS TAKES OVER WESTERLY SUN

(By Gerald M. Carbone)

WESTERLY.—The Westerly Sun, a family-owned newspaper that has served the town for 97 years, saw rare changes in its upper-level management yesterday when co-publishers Charles W. Utter, 73, and his brother George H. Utter, 69, announced their retirements.

The Utter brothers, co-publishers since 1976, appointed their sons to key management positions before stepping aside. The two sons, Robert, 37, and Nicholas, 43, will become the fifth generation of Utters to run the newspaper since it was founded in 1893.

Robert Utter, George's son, was named president of the Utter Co. and editor of the newspaper. Nicholas, who is Charles Utter's son, was named publisher of the newspaper and vice president, secretary and treasurer of the company.

The Sun, which has a daily circulation of 13,000, is still published in the Main Street building where it was founded 97 years ago. The newspaper publishes every day but Saturday because George B. Utter, the family partriarch, was a devout Seventh Day Baptist, a Christian faith that observes the sabbath on Saturday.

The family's decision to publish its weekend edition on Sunday scored the Sun a nationwide scoop on Dec. 7, 1941, when the Japanese bombed Pearl Harbor. News of the bombing broke late Sunday morning, long after the presses had stopped rolling at the big metropolitan Sunday newspapers.

Robert said he considers a newspaper as a "trust" that is held by its readers. He said that he and Nicholas will form a five-member board of directors that will include the two of them and three people from outside the family.

The Sun has seen a 20 percent drop in its advertising lineage in the past year, a slump that Robert attributes to the region's deep recession. "We've learned we can survive anything that happens," he said. "If the economy continues to shrink, we'll continue to shrink, but not to the point where we vanish."

Robert, who joined the Sun as a reporter in 1980, made sweeping changes to the Sun's editorial page when the paper formed an editorial board in 1989. For years the Sun's editorials, written by Charles Utter, were consistently conservative.

Robert and his uncle are "politically diametrically opposed," Robert said, "so it was really quite a shock to the community" when Robert began writing liberal editorials two years ago.

Robert said that further changes in the newspaper will be gradual as he and his brother take over the helm. But like his father and uncle before him, he vowed to keep the newspaper in the family's hands, and to resist efforts to sell it to large newspaper chains.

"The family is very traditional that way, and (selling) was never in our minds," Robert said.

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## DAVID PRYOR'S WORDS FROM THE HEART

Mr. HOLLINGS. Mr. President, our esteemed colleague, Senator DAVID PRYOR, was recently asked by Arkansas Time magazine to recount his experiences during and since his heart attack last April. The resulting article is a remarkable piece of writing. It would be compelling reading even if the author had been a stranger. But the fact that the article was written by a beloved friend and colleague makes it even more striking and even startling to read.

If DAVID PRYOR'S heart attack was a wake-up call for him, his memoir serves as a wake-up call for each and every one of us. Most obviously, DAVID hits us right between the eyes with the message that our lives and health are fragile, precious things. He also writes with great eloquence about the importance of family and friends—the importance of "gathering them around you," savoring their qualities and companionship.

Mr. President, Senator PRYOR concludes his article by quoting from the letter he sent to each one of us in the Senate a short time back. He concluded his letter with the words: "Only when life is nearly taken away do we realize how fragile it is and come to know the value of our friends. Thank you for caring. Sincerely, DAVID PRYOR."

I would simply respond that, regrettably, it was only when our whirlwind lives were jolted by the news of DAVID

PRYOR'S sudden illness—it was then that each of us stopped to think how precious DAVID'S friendship is to us. It was then that we stopped to consider and marvel at the very special qualities and character that this man brings to the Senate.

Mr. President, I ask unanimous consent that Senator PRYOR'S article in the August 1991 Arkansas Times be printed in the RECORD.

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

HEART ATTACK!

A SURVIVOR'S STORY

(By U.S. Senator David Pryor)

I will always remember that Monday night—not as the night I almost died, but the night that, for some reason, my life was spared. Unlike many others, I was given another chance.

Heart attacks were for someone else to have, not me. I had a total disinterest in the subject; I didn't have time for a heart attack. Besides, after each physical, I skipped out of the doctor's office as the man who kept defying his age and lifestyle—great blood pressure, a swimmer's heart rate, and strong lungs.

Yes, all of this in spite of greasy cheesburgers, French fries, 17 tons of salt, and many more than that "occasional smoke." Add in the 56 years multiplied by tension, stress, airplanes, and schedules, and even a dolt should have known that David Pryor was a prime candidate for the mother of all heart attacks.

I would sit in the Senate dining room in amused silence as my colleagues compared their cholesterol numbers. I didn't even know mine, or was I curious. Heart attacks were for others, not me.

It was Monday, April 15—a light day at the office. The Senate was not in session, none of my committees was meeting. It was a good day to catch up, clean off my desk, make sure everything was mailed to the IRS, meet with the staff, and be briefed for the Tuesday schedule. The Arkansas Homebuilders Association would be in town. The Harrison ninth-grade class was scheduled to be on the Capitol steps for a photograph. Dr. George Haas from Little Rock was coming up to discuss optometry issues. The Finance Committee would meet at 10. The weekly luncheon with members of the Senate Democratic Conference was on the schedule. Tomorrow would be busy and long.

I was home by 7 p.m., put on comfortable clothes, and watched the news. By 8 o'clock, I was walking up Connecticut Avenue headed to a favorite neighborhood eatery.

I wolfed down a big plate of spaghetti and meatballs, skimmed a folder on the Finance Committee hearings for Tuesday, read the current issue of Golf Digest, and was home in bed by 10:30. Barbara was in Thailand with a group of Senate wives and my house was a tomb of silence. I downed my cherry-flavored Rolaids, turned off the TV, and went to sleep wondering how Dick Darman, the president's budget director, would answer my questions about the exploding cost of prescription drugs.

Little did I know that within three hours, my life would change.

The next time I saw the sun, its rays seeped through the small window into my room in the cardiac unit of George Washington University Hospital.

I found myself in a strange place, surrounded by people in white coats I had never seen before—my forearms were blueblack, bruised from needles and trauma. My veins were punctured and ravaged. Above my bed to the right was a stand holding a bag of glucose dripping into my vein. To my left, a heart monitor was being hooked up to electrodes stuck to my chest.

A woman doctor sat on my bed, saying nothing, squinting across my body to the screen that showed the image of my heart via ultra-sound. In the corner were nameless people speaking in hushed tones about "prepping" me for tests downstairs. An orderly was clasping a plastic ID band on my left wrist. Equipment, wires, cords, monitors, graphs, and electronic technology consumed the small room.

Had I been run over during the night? Had I jumped from the Washington Monument? It had been a hard, hard night of pain and fear.

I kept thinking that the phrase "rode hard and put up wet" described me at the moment. A barely audible knock on my door. The face of an ancient little lady, a hospital volunteer, appeared and asked, "World you like your TV hooked up? It's only $3.75 a day."

It's a little eerie what goes through the human mind at these times. I kept remembering our family pew at the old Presbyterian Church in Camden. I was 14 and Jac Ruffin was our minister. He had been educated in Scotland and spoke with an elegant brogue, flawless diction and elocution:

"This is the age of the half-read page/The mad dash, the quick hash/The short hop and the brief stop/Until the spring snaps and the fun's done."

I didn't even have a comb, much less a toothbrush. Could someone get me some coffee? Well, OK, what about a glass of water? What happens when I need to go to the bathroom? Had they reached Barbara yet? How is she ever going to get from Thailand to Washington? What about my middle son, Mark—did someone call him? Oh, Lord, in a few minutes, those 60 Harrison ninth-graders will be on the Capitol steps. Did I lock the house last night? Where are my shoes? Did I bring a billfold? Oh, please, God, I pray I have insurance for all this.

It was morning and I had made it. What a night it had been.

"Good morning, Senator Pryor. I'm Dr. Varghese of the cardiac department. Let me introduce my colleagues, Drs. Herzog and Reimer. We will be your team during your stay at George Washington. You've had a heart attack. Could you sign this form? We need to take you downstairs to the Cath Lab. We will insert a catheter in your groin, push it up, and take a better look at your heart. You will be conscious during the whole procedure."

The room downstairs for the catheter procedures was vast. I remember its being very cold and during the procedure asking for extra blankets. Two nurses, two doctors, and me. All of us were glued to a huge TV-type screen watching the small wire-like apparatus move into the heart zone. It was hard to imagine this was my heart and my body being invaded by the catheter.

In almost an unknown tongue, the doctors interpreted to each other what they were seeing. It was like watching CNN back in January to see the previous day's battle damage assessments in the Persian Gulf.

Within an hour, I was being rolled back upstairs. The small waiting room was now filled to capacity. Staff. Old friends.

Waiting in my room were Dale Bumpers and Mary Hope Davis, his administrative assistant. Dale canceled his entire schedule for the day and never left the hospital. He stayed with me. He was a great source of strength for all of us, but especially for me. At one time, I had to demand that he leave my room, as he kept telling a litany of absurd stories and it hurt to laugh. The one that finally got me was about a poor fellow with no ears trying to get a job. I can't remember the punch line.

The flowers started coming. Telegrams. Did we want a phone hooked up in the room? President Bush called while I was in the Cath Lab. He'll call back in an hour when he finishes a speech. Where do we put all these baskets of fruit? "CNN just carried a big story about your attack," said a nurse passing by.

It was all unreal. It was a dream. This wasn't me. Beryl and Sheila Anthony. Ray and Betty Thornton. Bill Alexander—they all came and left, but I know they were there. John Paul Hammerschmidt called twice. I knew they cared. Dr. Halverson, the Senate chaplain, came to my bedside that day and every day I was hospitalized.

Somebody in my office told me one day about a Sense of the Senate resolution sponsored by Dale Bumpers the night before. It stated that the Senate hoped David Pryor would get well and make an early return to the floor. My staffer joked that it had only passed by a 51-to-49 vote.

One morning as I woke up a Senate colleague was sitting only inches from my face. When he saw that I was awake he lit up and said, "For years now, my daughter has begged me to take her fishing. I've always put her off. I don't know the first thing about fishing. But when I heard what had happened to you, I called her up and said, 'Let's go—today.'"

My mind tried to reconstruct the night before. I had jolted upward in bed and looked at the clock—1:45 a.m. I was lying in a pool of perspiration, soaked from head to toe. My upper chest did not feel sharp pain, but something better described as massive discomfort. Could it be indigestion? Did I really eat a live porcupine?

Within minutes of lying in that totally dark room trying to decide the next move, the intensity of pain increased. I've got to stand up. I'm getting light-headed. I grabbed a pair of red warm-ups from the chair. I fumbled for a golf shirt and started downstairs.

As I reached the bottom step, I knew. Rolaids and fresh air wouldn't help. I knew I was having a heart attack. Me, of all people. Alone. By myself.

Walking into the den, I reached for the phone and punched "9-1-1," remembering the recent horror stories in The Washington Post about ambulances arriving too late with crews not knowing what to do.

"My name is David Pryor. I live at 1615 19th Street. I'm having a heart attack and I need help. Please hurry."

I walked out the front door to wait. I sat down on the curb between two cars. What happens if the ambulance driver doesn't see me and drives right by the house? My chest tightened. My rib cage became a vise. I was losing consciousness. I stood up and spotted a white '72 or '73 Ford—one of those that had a long, wide hood. This one looked like a white aircraft carrier in the dead of night. I climbed up on that hood and laid down. I remember it was wet and the cool dew of the April night felt good to a body being wracked with pain.

I don't remember that an ambulance and a firetruck came, but I do remember being helped onto a stretcher. Inside, the ambulance had very bright lights; its siren sound-

ed as if it were far off in the distance as we raced against time to the hospital.

My face was immediately covered with an oxygen mask and the woman attendant inside asked me, "From one to 10, how much pain are you having?"

I held up 10 fingers.

I have no recollection of arriving at the emergency room, but I have a most vivid memory of eventually looking up into a dozen unknown faces who had assumed total control of my body and being. They were all too young.

"Breathe-breathe-breathe," chanted the ER team.

"Give him more oxygen."

"Are you allergic to any drugs? What about morphine?"

"Are you really a senator? What state are you from?"

"How do we reach your wife—what about your staff?"

In the background, someone said, "We've got to find the next of kin."

"You've had a heart attack, Senator. We're trying to get you stabilized."

People everywhere. Chaos. For over two hours I was in and out of a subliminal state.

"Am I going to make it?"

"You're doing better. You're doing better."

"Senator, President Reagan was on this same bed 10 years ago. Mr. Brady was right next to him beyond that curtain," said a young doctor who probably was in high school when Ronald Reagan was shot.

At one point, I had a strange sensation I'll never forget. I felt like an automobile tire being blown up to the point of bursting. I knew I was going to explode. Am I dying? Or have I died? Is this what death is all about? Don't I have some say in all of this? Things were moving too fast for me to follow. I couldn't comprehend it.

The clock on the emergency room wall now said 4:30. For nearly three hours I had been flat on my back—jabbed, hit, shocked, monitored, and gouged. In the outer room, I could now see Don Harrell and Leslie Chalmers from the staff, Bob Bean from the staff of the Senate Sergeant at Arms, and my sons David Jr. and Scott had just come in.

Things were going better—I could sense it. I was going to be all right.

An hour later, the ER doctor said, "We're getting ready to move you upstairs to the cardiac unit. Do what they tell you."

Soon, as I was being rolled past my sons and staff, I looked at Don Harrell and said, "Don, I've had a heart attack. Let's don't tell anyone. Keep it off the record." Fortunately, he had the good sense to ignore that request.

Six nights after my attack, I had done well in recovery and progress was promising. Barbara had returned on Wednesday and now our three sons were together with us. Never had we all been closer. Nor could two parents ever be more proud of their children than we were of David, Mark, and Scott. We found ourselves in that crucial passage in life when, for the first time, the children begin to assume responsibility for their parents. Jim Lehrer, co-anchor of PBS' "MacNeil-Lehrer Report" and a longtime friend, had not missed a day visiting me in the hospital. Eight years ago, he had had his heart attack. An overflow of friends and flowers. Mail came in sacks from wonderful and caring people. I was a blessed man.

While doctors were pleased with my progress, they had been considering whether to perform a routine procedure to remove some remaining blockage. Even though such procedures are routine, doctors would rather not perform them unless they are necessary. Very late on Sunday night, my heart decided the matter for us. I awoke with a severe pain in my lower intestine. Its intensity alarmed me and had me ringing for the nurse. When she came into the room, she sensed I was in trouble. For an hour, a doctor and nurse studied blood and monitors. After medication and sleep, the early morning hours brought in my "A Team" of doctors who had studied the charts of the night before.

"Senator, again, we're going to take you down to the Cath Lab in two hours. Again, we're going into your groin with a catheter and go up to your heart. The process is an angioplasty, better known as 'the balloon.' You will be awake during the procedure, which takes a little over an hour."

Dr. Alan Ross headed up the team. Only a week later, he would be one of three cardiologists to see and consult President Bush after his cardiac episode at Camp David.

Again, I lay in the lab and watched a catheter move from by groin into my heart. After some 45 minutes, Dr. Ross said, "Watch the screen closely. Keep your eye on the end of the catheter. We're about to insert it in this closed artery, blow up the balloon and open it up."

Science fiction. Dr. Strangelove. It worked; Ross and team loved it and gave a big cheer. It was like sinking the 60-foot putt to win the Masters.

Within an hour, Alan Ross was in my room with before-and-after photos. It was the great unclogging. Yes, there was still some blockage, but that little magic pump was working just fine again.

The following Friday, I got to go home. Leaving George Washington Hospital was emotional, since the cementing of bonds had brought me close to a hundred people who had touched my life. Most were lined up there when my wheelchair was pushed into the elevator. I was told early on that heart attack victims can get emotional during their recovery period. I learned that I was no exception.

Our small house on 19th Street was almost floor-to-ceiling in flowers, food, books, and mail. For the first time in almost two weeks, I was unhooked from heart monitors and seemed to be free-floating on my own. No longer could I look up and see the activity of my heart on the screen. I felt vulnerable to everything around me. It was an awesome and frightening experience.

For 10 days, I had a routine of reading mail and newspapers and talking on the telephone. Senators and friends would come by during the mornings. My longtime friend Nick Kotz brought me a beautiful pair of Nikes. Jim Lehrer continued to come each day. He would do his newscast and come later in the evenings. We knew, because he had been there before, that nights were hardest for those who had survived heart attacks. For weeks after leaving the hospital, I had a certain dread of the nights to come—and I always welcomed the sounds and feelings of early mornings. Jim became my rock. At any time or circumstance, he knew where I was coming from.

Hearts can play tricks on us. After 10 days of being at home, I chose Dr. Oscar Mann to become the "captain" of my Washington medical team. An internist and cardiologist, he practiced at Georgetown University Hospital. He has a superior reputation. He also is a warm and caring person.

Barbara and I were to meet Dr. Mann in his office at 11 a.m. Monday. It was to be my first trip out of the house and I was excited. Ten minutes into our initial visit with Dr. Mann, I started experiencing mild chest pain.

"How do you feel, as we now speak at this moment? What's going on?"

"I'm having pain, not nearly so severe, but very reminiscent of my heart attack."

With no hesitation, he picked up his phone and told his secretary to advise Georgetown University Hospital that they were about to have a new patient—a David Pryor from Arkansas. Barbara sped me to the hospital in minutes.

Again, monitors, blood, urine, questions, EKG—the whole works. That afternoon was my most despondent period during the weeks since my attack. I started believing there was something I was not being told. Was it going to be this way for the rest of my life? Was I ever going to be able to breathe freely? Was I to be a constant prisoner chained to a heart monitor?

I had not, according to a battery of tests, enzyme counts, and assurances, had another heart attack—only a spasm. My progress has been steady and sure ever since.

I can now be found at the grocery store reading labels and checking products for fat content. The hospital nutritionist assured me, during our first counseling sessions, that I would not have to give up steak entirely. I had just explained that I could do without smoking cigarettes; I could make it fine with no cream or other high-fat foods. But not steak. I would have to eat a steak now and then. "Sure," she said. "That's no problem."

"How often can I have it, then?" I asked.

"Oh, probably two times a year."

Well, so much for steak.

I'm religious (but not fanatical) about early-morning walks and pray I'll never smoke another cigarette. Before my attack, I knew they were bad for your lungs, but didn't know how deadly they were for the heart. Today, I know.

There's a wonderful community of heart patients out there. I'm now a member of their club. I can talk the language. It does us good to talk to one another and compare notes. Not only is it a catharsis, but an education. Each day, I learn something new about my heart from others in "the club."

Almost daily, some perfect stranger comes up and says, "Senator, I had a triple two years ago—never felt better."

Some 3,000 to 4,000 people sent me cards and letters. I read each one. A fifth grader from Conway wrote. "Senator, we heard you had died and we're glad it wasn't true. Welcome back."

A wonderful 83-year-old woman from Arkadephia not only wrote me, but had her niece take a picture of her holding a "Pryor" fan, one of the hand-held fans we gave out during campaigns. She thought it might cheer me up. In late May, I was saddened to see her obituary and that she had died of cancer.

There is a basic unvarnished goodness about the people of Arkansas. There is an unpretentious caring and generosity that comes out when one of us needs courage or compassion. Once again, as they have during my 30 years of public life, our people gave me hope and strength.

Well, so much for having a heart attack. Now, it's restructuring time. I refuse to become a professional heart attack victim. I hope that I'll not be known as "David Pryor, who suffered a heart attack in 1991 . . ." Surely there must be something better for which to be remembered.

On June 11, I wrote my colleagues in the Senate. Let me share a few lines of my letter:

"I hope none of you will accuse me of 'preaching' when I close this update by simply saying this to those I care for deeply. Be very careful. Care for yourself. Each of you is a very special human being. Pause every now and then. Take a deep breath. No one but you can decide what is really important.

"Reach out and touch your family. Gather them around you. Find strength in your real friends who care. Take some time for yourself, by yourself. Only when life is nearly taken away do we realize how fragile it is and come to know the value of our friends. Thank you for caring. Sincerely, David Pryor."

## THE NOMINATION OF CAROL IANONNE

Mr. MOYNIHAN. Mr. President, on Friday of the week before last, I spoke here on the floor about the rejection by the Senate Labor and Human Resources Committee of the nomination of Carol Ianonne to the Advisory Council for the National Endowment for the Humanities. There were simple enough reasons for having done this. I recall the early days of the Council when Douglass Cater looked after it in the Johnson White House. I know what pleasure it gave them to have begun this fine enterprise. And I know of the great expectations of the early Council members, notably Paul Horgan, that most luminous, incandescent scholar and writer. I have since followed the Council's fortunes, not always the happiest, but cumulative and on balance honorable and hopeful.

Then came this recent affair, which was at very least discordant. Language was used that I do not recognize as the language of scholarly disputation; not surely of those gathered under the broad and welcoming tent of the humanities. I was, of course, hearing the language of contemporary politics. Of which, I suppose, I am on familiar if not always friendly terms. I also heard—and here I ask the understanding of the Senate, for there are few of us who are not at times oversensitive, even prideful, on behalf of our States—I also heard the language of disapproval of New York. Very possibly, very likely, I got it wrong. But it would be disingenuous not to admit to having sensed it. Here was a New York author, and adjunct professor at New York University, being denounced for views that may be uncommon is much of the country but are in easy circulation—along with so many others—in my city, which has ever been known for disputation of this order. Further, much was made of the author's association with that quintessential New York Journal, Commentary, a publication of the American Jewish Committee.

And so I went to the floor on July 19 and spoke my piece, thinking to merely set forth some of the cultural modes involved here. I surely meant to be good-natured.

I spoke to an empty Chamber, as is likely to be the case of a Friday morning, and did not expect any great notice to be taken. To say again, I was speaking in the RECORD for the record. The following Thursday, July 25, however, the Wall Street Journal had a short comment on my remarks in that portion of their editorial page which they call "Asides." They did not fail in their duty to sow discord among Democrats. They suggested that my remarks were a veiled criticism of my good friend, the senior Senator from Massachusetts, and noted, quite accurately in this case, that I had spoken of the intellectual difficulties that seem to plague our party just now. In all, the Journal quoted 68 words of my floor statement, which had been somewhere in the range of 2,000 words.

Even so, I was taken back by the tone of a letter which was "faxed" to me later the same day by Stanley N. Katz, president of the American Council of Learned Societies. I ask unanimous consent that it appear at this point in the RECORD.

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

JULY 25, 1991.

Hon. DANIEL PATRICK MOYNIHAN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR MOYNIHAN: I had heard indirectly that you were supporting the nomination of Dr. Carol Iannone to the NEH Council, but until I read this morning's Wall Street Journal, I had no idea that you were accusing Iannone's opponents of religious, class and ethnic prejudice.

I am outraged by your statement. Perhaps the nine Senators who voted against her hate Italians, Catholics and working class people (women, too?), but I doubt it.

The organization of which I am President opposed Iannone's nomination in a letter to Senator Kennedy's committee. We are concerned with the steady decline in the overall quality of the NEH Council, given the fact that NEH is increasingly the dominant funder in the humanities in this country.

Something like 300,000 post-doctoral scholars belong to the 51 organizations we represent, and you have attacked the integrity of each and every one of them. You have certainly insulted me personally, as a public opponent of the nomination. ACLS is the largest humanities organization in the world, and it resides in New York State—might it not have been a good idea for someone on your staff to inquire into our reasons for opposing Iannone? Or don't you care what we think? Or why we think it? I am simply appalled that a fellow Democrat, intellectual and academic should resort to such scandalous and irresponsible imputation of bad motives. What should I make of your own?

There are two problems of political correctness in this country, and you have now publicly endorsed the version of PC espoused by Dr. Cheney, President Bush, and the Olin and Heritage Foundations. How good for the Democratic Party is that, Senator? Much more important, how does that aid the free exchange of ideas in a democratic society?

I have never written an angry letter to a public official before, but I have never felt so betrayed by someone I admired.

Yours sadly,

STANLEY N. KATZ.

Mr. MOYNIHAN. Apart from the fact that I was not accusing anybody of anything, there are two problems with this letter which lead me to feel that it is not enough simply to ignore it, or to set it aside with a soft answer.

The first problem is that Dr. Katz chose to write a letter of such fierce conviction on the basis of three brief excerpts from a statement made on the Senate floor without having read the statement itself. There would have been no great problem obtaining the full text. The CONGRESSIONAL RECORD reaches New York. In the event the mails had proved deficient, I would happily have had a copy sent over from my New York office. I would even have faxed a copy!

Just what is going on here? Surely a first principle of scholarly work is to obtain all the available facts. In the humanities this is elementally a matter of getting "the text." By contrast, nothing so afflicts the politics of our time as the 30-second quote taken out of context, and such like. Has the disorder spread? Evidently.

But next, what is this business of my having attacked "Something like 300,000 postdoctoral scholars belong[ing] to 51 organizations." "[E]ach and every one of them?" This gets close to Newspeak. Evidently, I have offended The People, "each and every one" of whom will now rise—altogether, now—in righteous wrath. There is a whiff of the totalitarian mode in all this. I recall a passage of Hannah Arendt in which she writes of the tactic of the totalitarian elites in Europe in the 1920's and 1930's of turning every statement of fact into a question of motive. I don't care for it.

In any event, I certainly do not like hearing from Dr. Katz that he speaks for me. The current Annual Report of the American Council of Learned Societies has a page headed "Organizational Structure." It begins:

CONSTITUENT SOCIETIES (WITH YEAR OF FOUNDING)

American Philosophical Society, 1743.
American Academy of Arts and Sciences, 1780.
American Antiquarian Society, 1812.

It happens that I am a member of each of these distinguished bodies. Membership is by election, and brings no small advantages. Thus, there are no dues at the American Philosophical Society, Dr. Franklin having seen to the matter centuries ago. Mind, he limited membership to 500. It also carries responsibility. I do not one bit care for the idea that an executive of the ACLS would claim to speak individually for three hundred thousand American—and foreign—scholars whose irrepressible practice is to speak for themselves.

All of which leads me to ask, are things as bad at American universities as some would have us think? Years ago—it would be 18 now—I was asked to give the Stearns Lecture at Andover

Academy in Massachusetts. This was 1973. Starting in the mid-to-late 1960's, university and college campuses across the Nation had been the scene of great tumult and disorder. It seemed to many that this could only worsen and there were not a few inclined to think the worse the better I took a dissenting view. I said it was all over. I called my lecture, "Peace"—it was later published in the Public Interest—and argued that the extraordinary demographic change of the 1960's was now a thing of the past, and would no longer sustain the ideological tumult of the period. Campus disorders were over. Here is an excerpt.

I'd like to state that most of the events that tore American society almost apart, or so it seemed in the 1960's arose from conditions unique to the decade in which they occurred. They had not ever existed before. They will never exist again. They involved the interaction of demographic and political-cultural changes. We have more complex terms of this than perhaps need be, all derived from the Greeks, and vaguely related to philosophic doctrines of the past. We use the term "synergistic,"—the interaction of muscles, of chemicals, of philosophical doctrine, such that two events quite separate in their origin affect one another in such a way as to produce outcomes vastly different and greater than either could produce on its own, more amplified and in ways fundamentally different from the effect either event would have, had it occurred in isolation.

The proposition I'm going to put to you is simple. It is sufficient, I hope, at least to start a discussion of just what did happen. I'm going to say to you that the 1960's saw a profound demographic change occur in American society which was a one-time change, a growth in population vaster than any that had ever occurred before or any that will occur again, with respect to a particular subgroup in the population, namely those persons fourteen to twenty-four years of age. This sudden increase in population interacted in a synergistic sense with a whole series of other events which originate, if you will, in the world of ideas, as distinct from the physical world in which populations increase or decrease. In the best-known example of the 1960s, people changed their minds about the requirements of justice and decent public policy concerning minority groups in American society at just the moment when the size and location of those groups were dramatically changing. But this was not the only change. People changed their minds about this, they changed their minds about that, and they changed their minds at just the point when the physical conditions of life, the ecological facts of how many people are around and where they are, were also changing. These changes interacted in such a way as to produce extraordinary differences—discontinuities—with the period immediately preceding and which I think will now be seen to be discontinuous with the period that now follows.

I begin to wonder. Quiet fell upon the campuses. But did disorder cease? Was I too optimistic? Too shallow? I recall how Lionell Trilling—I mentioned him in my remarks of July 19, suggesting that if Dr. Ianonne only wrote the Commentary, she was even so in stately company—I recall his forebodings of the aftermath of that period. He felt, as best I understood him at the time, that an already deep division in American culture had grown even deeper, and that there would indeed be further degradation of democratic dogma. Here is a passage from Noel Annan's remarkable memoir, "Our Age," just now published in the United States:

There was, however, another critic of Our Age [an] American. Lionell Trilling was par excellence a New York intellectual, but his works on Arnold and E.M. Forster and his sympathy for English culture gave him a special place in the affections of Our Age. His referents were Freud and Marx, but the conclusions he drew from them were very different from what the readers of the Partisan Review expected when he looked at the wheelbarrow of progressive conclusions that so many trundle across their garden in planting ideas. Trilling defended Whittaker Chambers and shocked his liberal friends by accepting that Alger Hiss had been a spy. The theme of his first volume of essays, *The Liberal Imagination*, was that liberals had no imagination. He used the word "liberal" in the American sense as the "educated class which has a mind suspiciousness of the profit motive, a belief in progress, science, social legislation, planning and international cooperation". Trilling pointed out that no major great writer had ever celebrated these beliefs and he wondered how liberals could admire those who rejected these beliefs so decisively. He questioned whether the heroes of American modern literature in those days—Dreiser, O'Neill, Dos Passos—were heroes or plodders bereft of subtlety or ideas. He said that sociologists such as David Riesman told us more about society than most modern novels. He was a liberal in the English sense—or rather of those Englishmen who were suspicious of the good intentions of the enlightened.

These are matters of proper concern to humanists everywhere and at all times. But having read Jonathan Yardley's withering comment about this most recent "battle between the spent, irrelevant old left and the oafish, elephantine new right" I wonder whether we might all look to our manners just a bit. Mind, many of the adversaries on both sides were impeccable in this regard. I would urge Dr. Katz that he need not indulge any disinclination to write angry letters to public officials. It is good for us. But could we keep in mind Melbourne's celebrated comment on Macaulay? And Orwell's dictum that there is always room for one more custard pie!

Mr. President, again for the record, I ask unanimous consent that my July 19 remarks be included in the RECORD at this point.

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

[From the CONGRESSIONAL RECORD, July 19, 1991]

Mr. MOYNIHAN. Mr. President, as Senators will know from the long and careful reports in yesterday's press, the Senate Labor and Human Resources Committee on Wednesday rejected by one vote the controversial nomination of Carol Iannone to the advisory council for the National Endowment for the Humanities. The view of the majority appears to have been that Dr. Iannone had insufficient citations in the Arts and Humanities Citation Index and the Social Science Citation Index. It was also alleged that her principal publications have appeared in Commentary magazine. It was never clear to me whether the objection to Dr. Iannone was that she had ever published in Commentary, or that she had done so insufficiently. No matter, I rise merely to express my disappointment on behalf of Dr. Iannone, and melancholy acknowledgement of the further intellectual decline of the Democratic Party. I almost said demise, but will leave bad enough alone.

A curious allegation: merely a Commentary writer. And in ways, a revealing one about our capital. Just to say it out loud is to realize that just possibly Washington is the only capital in the Western world in which such an allegation would be made with intent to harm. In London, Paris, Rome, Stockholm, to say of a professor of literature that his or her principal work has appeared in Commentary is—well—to say that this is a critic of the first rank. In the tradition, say, of Lionell Trilling.

Commentary is, as its cover states, "Published By The American Jewish Committee." It was founded, as I recall, in 1945—thereabouts—by the legendary Elliot E. Cohen who was editor until his death in 1959. He was thereupon succeeded by Norman Podhoretz, who remains editor to this day, assisted by Neal Kozodoy, Marion Magid, and Brenda Brown. They have equals, one should not doubt, in the world of literary criticism. But that said, the matter rests. None surpass them.

Ours is a political world down here, and these matters do not routinely enter our thoughts, much less our conversation. This despite the fact that from the first, Commentary writers have had pronounced political views. This again may be more a European than an American style, but then New York has always had a special association with European thought which the rest of the Nation has not failed to notice.

I distinctly recall, and knowing his great good nature, I am sure he will not object to my relating, a trip to New York City in May 1977 with then Vice President Mondale. The spring recess was about to begin and he was off to one of his beloved Minnesota lakes where his tackle box and bass gear awaited him. He had been asked to stop in New York on his way home to speak at the dedication of a new facility at Sloan-Kettering Hospital. Hubert Humphrey had been treated there the previous year and there was, of course, nothing he or any other Member of the Senate would not do for Hubert. I assume it is correct to refer to the Vice President as one of us. He is, after all, our Presiding Officer. The Vice President, as was his great courtesy—which I could wish had become a custom of that office—asked if I would like to ride up with him. I was heading home as well, and would naturally want to be on hand at Sloan-Kettering. Anyway, I got out to Andrews a few minutes before Fritz arrived, and settled down aboard Air Force Two with a cup of coffee and the new Commentary. The cover featured a major article on Soviet politics by a friend of mine who was then teaching at Harvard. I thought it first-rate, and mentioned it to the Vice President when he got aboard. He asked if he could take it with him on his vacation, to which, of course, I agreed. That afternoon I called Norman Podhoretz. I said:

Norman, I have some good news and some bad news. The good news is that the Vice

President of the United States is taking the new issue of Commentary with him to read over his vacation. The bad news is that until this morning the Vice President of the United States had never heard of Commentary.

I have to believe that things have not much changed in the intervening 15 years. In the Senate, that is. Mind, the Washington Post knows about such matters. It is not so long ago that the Post called Commentary "America's most consequential journal of ideas." Which is fairly restrained by the standards of the Toronto Daily Star, which once declared:

It [Commentary] is the best monthly in the English-speaking world.

This is the journal Professor Iannone is accused of writing for. Well, there you are.

Well, no. there is more. My distinguished friend, the Senator from Utah, touched upon the matter in a remark that appeared in yesterday's Post. In an exchange in the Committee on Labor and Human Resources, he defended Professor Iannone's qualifications stating:

She's from a first-generation, immigrant, working class family. * * * And she's only 43 years old.

Senator Hatch may know more than even he realizes. For it is the distinctive feature of Commentary that to a degree that I cannot imagine has any contemporary or historical equivalent, Commentary has published the work of young writers born into or raised among the working classes of New York City. Many of them were and are Jewish, as is only natural for a journal published by the American Jewish Committee. Many had grown up in the Marxist milieu that was so common in New York in the years 1920–50. Some had been Marxists, frequently Trotskyites. Others had been anti-Marxists but as young Robert Warshow, a Commentary writer in the 1940's—who died much too young—observed, either way your life was caught up with that subject. And so issues of the political left received inordinate attention in Commentary. But with this difference. Those writing about The Workers actually knew some. The Irving Kristols and Nathan Glazers—to name but two of a succession of major American intellectuals who were editors at Commentary—grew up in the working class neighborhoods of New York City. A setting as natural to them as the salons of their radical counterparts in Paris or Berlin. Or Greenwich Village. I recall once visiting W.H. Auden in the Village. He was living in the building from which Trotsky had published Novy Mir before the Russian revolution, a thought which gave the great British poet much satisfaction. As it would any Oxford graduate. Trotsky was, after all, a literateur. A bohemian. He would never, however, have made a Commentary writer. Too refined.

I ought to declare my interest here. I first appeared in Commentary—Lord save us—30 years ago this May. My article, which Norman Podhoretz features on the cover, was entitled "Bosses and Reformers: A Profile of the New York Democrats." I had been involved in New York Democratic politics for some years by then. I had watched the developing divisions within the Democratic Party as between its working class, mostly Catholic, traditional constituency, and a new group of middle or upper middle class, mostly Protestant and Jewish, professionals who were challenging the old-time leaders. Denigrated, of course, as "bosses." This was something new. With rare exceptions, such scions as Herbert Claiborne Pell, Jr., father of our revered senior Senator from Rhode Island, a Member of Congress from Manhattan, and from 1921–66 chairman of the State Democratic Committee. As New Yorkers moved into the middle classes, they left the Democratic Party in this century. The Irish were even then departing, as Glazer and I wrote in "Beyond The Melting Pot: The Negroes, Puerto Ricans, Jews, Italians, and Irish of New York City." But something in the Jewish tradition said otherwise. Middle-class professionals they may be, or may have become, but they remained Democrats. But, as Bernard Shaw might say, with different tastes.

This conflict was adumbrated in the doomed Presidential races of Adlai Stevenson in 1952 and 1956. But all hell broke out over the nomination of John F. Kennedy for President in 1960. Kennedy was a Catholic; Kennedy was a conservative. And his brother—well. The first statement was a fact, the second a perception. But among New York liberals perceptions are facts. And so the word went forth from Eleanor Roosevelt, Thomas K. Finletter, and yes, our beloved Governor Herbert Lehman, that Kennedy would not do. The reformers hated and feared him. Now these bosses were, generally speaking, perfectly democratic Democrats, such as Charlie Buckley of the Bronx, our grand old colleague Gene Keogh of Brooklyn, even the legendary Dan O'Connell of Albany. Well, in the latter case, I suppose, a real boss as well as an alleged one. Kennedy was the overwhelming favorite in our party. But not of the reformers. The scenes in the Los Angeles Convention were tumultuous, often painful. Even if, as I recall, the reformers had only 2½ votes, all pledged to Stevenson. I was a Kennedy delegate in Los Angeles—an alternate delegate, actually, but I have in my Senate office a small framed emerald green badge that says: "Delegate for Kennedy," with my name written below. But I had friends in the reform camp. When it was all over and the wounds, if anything, worse, it seemed to me a useful thing to try to explain this to the respective parties, neither of which really understood the other. There was no better place to publish such an article than Commentary, and I was thrilled when Norman Podhoretz accepted it. No, Mr. President, I haven't got that quite right. It was not just that Commentary was the best place to publish it, it was also the place that would. A journal such as the Atlantic or Harpers just wouldn't be interested in what working class Democrats thought.

That is the point I would hope to make. My good friend from Utah was absolutely right. I very much fear Professor Iannone's troubles arose not from the quality of her work, but from her genes, social and otherwise. She is an Italian, Catholic ethnic with a working class background.

Yesterday's Wall Street Journal carried an absorbing review by David Brock of Aaron Wildavsky's new book, "The Beleaguered Presidency." Professor Wildavsky, lost now amongst the lotus eaters of Berkeley, retains the street-wise toughness of a native New Yorker. And he can spot what is going on among Democrats. What is going on is the logical extension of the trends I tried to describe in Commentary 30 years ago. To wit, the Democrats are becoming a "party that delegitimized the Nation's second largest constituency—white, working, Christian males."

I suppose the largest such group would be the female of that species. In any event, Professor Iannone has had a setback on account of it. But I dare to hope that she will not take it personally. I do not know her, but I know some of her work. From Commentary, obviously. I sense that quality William James described as tough-mindedness. Actually, the future should be bright. She has been banned in Boston. No greater fortune ever attended the struggling novelist of the 1930's. Sales would soar outside of Boston. Professor Iannone has now been banned in the Democratic Party. What greater fortune could befall an American intellectual in this decadent fin de siecle. I wish her well.

Mr. President, I wish her well.

## TRIBUTE TO JOSEPH ANTHONY WALSH

Mr. FORD. Mr. President, I am privileged to have the opportunity today to recognize Joseph Anthony Walsh of Louisville, KY, upon his selection as a fellow of the Academy of Electrical Contracting. As many of you may be aware, the academy was established in 1968 to honor outstanding leaders in the electrical contracting industry. There are only approximately 300 members of this organization across the United States.

Tony, who is president of United Electric Co., has been instrumental in a number of successful programs in the Louisville area as a long-term member of the labor/management committee of the Louisville chapter of the National Electrical Contractors Association. Because of his efforts, a special commercial agreement was developed with union backing that allows contractors more competitive opportunities. In addition, he was active in supporting a market recovery program in Louisville that has resulted in more than 800 separate jobs that have been given special attention and concessions that have enabled union contractors to compete with their open shop counterparts.

Tony has been very active in the leadership of the Louisville NECA chapter, having held the positions of director, vice president, president and governor, and he presently serves as a district representative on the NECA Government Affairs Committee, keeping tabs on what we do up here.

I congratulate Tony Walsh on this very prestigious distinction. My interest in his achievements goes beyond the norm because his wife, Doris, is one of my district office representatives. She is very proud of him, and so am I.

## THE KILLING OF SEVEN LITHUANIANS

Mr. DECONCINI. Mr. President, though I have spoken on behalf of the Baltic States only recently on this floor, I feel I must do so again today in light of the killings of seven Lithuanians at a Lithuanian border post yesterday. As usual, President Gorbachev simply cannot seem to determine who was responsible, although reports indicate that, as in the past, Soviet special police forces were involved. President Gorbachev responded to questions

about the incident yesterday by calling for an investigation; but that investigation will probably be carried out by the Soviet Internal Affairs Ministry, those most likely responsible for this atrocity.

Mr. President, when is this violence going to stop? All three of the Baltic States have been waiting patiently for Moscow to begin a genuine dialog. But instead of negotiations, we have witnessed a sustained, low-intensity conflict waged against the Baltic States which involves killings, beatings, and persecution. This aggression began violently last January when over 20 innocent people were killed in Lithuania and Latvia. And now seven more Lithuanians are dead.

Is this Gorbachev's idea of good-faith negotiation? Will he once again whitewash the special forces, as he did by sanctioning the outrageous report on the violence in January issued this June by the Soviet Procurator? The authors of that report expected the world to believe that the Lithuanians killed were run over by automobiles or died of heart attacks.

Furthermore, I was stunned by President Bush's reaction. The strongest words the President could say were that he "regrets the violence." Was he so concerned about not confronting his genial host that he could find no stronger words to condemn the deaths of seven innocent people? The President termed the killings "cross border violence." How can this be "cross border violence" when only one side, Moscow, is behind the bloodshed?

In spite of this relentless violence and harassment, President Bush wants to grant MFN status to Gorbachev's government. Let the record state that this is one Senator who is going to have a great deal of difficulty approving any agreement with a government that murders people whose only crime is to struggle for their own freedom.

## TRIBUTE TO LORENA SHOWERS

Mr. STEVENS. Mr. President, I rise to commend Lorena Showers, the 87-year-old current head of the Hotel Employees and Restaurant Employees Local 878, as she receives a very special award.

Lorena took the lead on issues such as health care and pensions before most people knew how important they would be in the 1980's and 1990's; she spoke of them in the 1950's. It is because of this special commitment that the City of Hope National Medical Center and the AFL–CIO in Alaska have joined together to award a research fellowship in her name at the City of Hope National Medical Center and Beckman Institute.

This special award will be presented to Lorena on September 28, 1991, at the First Annual Alaska AFL–CIO "Spirit of Life" Celebration in Anchorage, and I want the Senate to recognize Lorena's efforts as one committed to the health and well-being of the working people of America as we celebrate Labor Day.

I ask unanimous consent that the text of the resolution be printed at this point in the RECORD.

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

RESOLUTION

To commend Lorena Showers for a lifetime of professional and civic leadership in the labor movement in Alaska, on the occasion of her receipt of the first annual "Spirit of Life" award from the City of Hope National Medical Center on September 28, 1991.

Whereas, the American Heritage Research Association has bestowed upon Lorena Showers its award "Human Resource of the United States";

Whereas, the City of Hope National Medical Center will establish the Lorena Showers Research Fellowship, representing organized labor's strong support of research and pioneering treatment programs for leukemia and other forms of cancer, as well as diseases of the heart, blood and lung;

Whereas, Lorena Showers has been a leading force in Alaska's labor movement for five decades;

Whereas, Lorena Showers, born in 1904 in Iowa, heads the Hotel Employees & Restaurant Employees Union Local 878 at the age of 87;

Whereas, Lorena Showers has an extraordinary commitment to issues affecting the elderly;

Whereas, Lorena Showers has been named Alaska's "Grand Lady of Labor" by the Alaska AFL–CIO;

Whereas, Lorena Showers has been a leading force in Alaska's labor movement; Now, therefore be it

*Resolved*, That the Senate of the United States commends Lorena Showers for a lifetime of contributions in the field of health, labor and community service which have set an example for the people of Alaska and for the Nation.

## TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,329th day that Terry Anderson has been held captive in Lebanon.

## UNANIMOUS-CONSENT AGREEMENT—S. 1554

Mr. MITCHELL. Mr. President, if I may have the attention of the Senate, following extensive consultation with the distinguished chairman of the Finance Committee, the Republican leader, interested Senators and the House leadership, we have reached an agreement on the disposition of the unemployment compensation bill.

I will momentarily propound a request for a unanimous-consent agreement which, if agreed to, I will then call for the regular order, return the Senate to consideration of S. 1554, the unemployment compensation bill and, under the term of the agreement, complete action thereon in approximately 40 minutes, following which, it is my intention to return the Senate to consideration of the pending Department of Defense authorization bill.

Accordingly, Mr. President, I now ask unanimous consent that when the Senate resumes consideration of S. 1554, Senator BENTSEN be recognized to offer a modification of the pending committee substitute that makes the effective date for the act September 1, rather than October 1, and several technical changes; that only one amendment be in order to be offered to the bill and that only to be a substitute amendment offered by Senator DOLE; that there then be 40 minutes of debate, equally divided and controlled in the usual form, on both the Dole amendment and the bill; that following disposition of the Dole amendment, the Senate vote, without any intervening action or debate, on adoption of the committee substitute, as amended, if amended, and final passage of the bill; that if the House sends to the Senate a House bill that is substantially identical to the Senate passed bill, S. 1554, upon receipt of the House bill, the bill, without any intervening action or debate, be deemed read a third time and passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, reserving the right to object, and I shall not object, just so the record will reflect that in the event there should be some major difference and they are not quite identical when it comes back, then, of course, the leaders would get together and work out any problem.

Mr. MITCHELL. That is correct. This, the latter clause of the request, assumes an agreement between the leaders, that the legislation returned from the House is substantially identical to the Senate-passed bill. If that is not the case then we will review the matter and if agreement cannot be reached then it would be my intention to vitiate this aspect of the agreement.

I do not expect that to occur since we have already discussed this at some length with the House leadership.

Mr. President, before final consent is granted, I also wish to make clear that when I used the figure "40 minutes of debate," that is the aggregate amount of debate and it will be on both the proposed alternative to be offered by Senator DOLE, and the bill, at the same time; that is, there will be a total of 40 minutes' debate and then the vote will occur on the proposed alternative by Senator DOLE, and then on the bill.

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

Mr. DOLE. If the majority leader will yield just briefly, I think now that consent has been granted, I hope we have set a precedent here with the 40 min-

utes for debate that may carry over to the DOD authorization bill.

Mr. MITCHELL. Mr. President, pursuant to my earlier statement, and the consent sought having been granted, I now call for the regular order.

## EMERGENCY UNEMPLOYMENT COMPENSATION ACT

The PRESIDING OFFICER. The regular order is S. 1554. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1554) to provide emergency unemployment compensation, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Finance, with an amendment to strike all after the enacting clause, and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Emergency Unemployment Compensation Act of 1991".

**SEC. 2. FEDERAL-STATE AGREEMENTS.**

(a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this Act with the Secretary of Labor (hereafter in this Act referred to as the "Secretary"). Any State which is a party to an agreement under this Act may, upon providing 30 days written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF AGREEMENT.—Any agreement under subsection (a) shall provide that the State agency of the State will make payments of emergency unemployment compensation—

(1) to individuals who—

(A) have exhausted all rights to regular compensation under the State law;

(B) have no rights to compensation (including both regular compensation and extended compensation) with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law (and are not paid or entitled to be paid any additional compensation under any State or Federal law); and

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(2) for any week of unemployment which begins in the individual's period of eligibility (as defined in section 7(2)).

(c) EXHAUSTION OF BENEFITS.—For purposes of subsection (b)(1)(A), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

(2) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(d) WEEKLY BENEFIT AMOUNT.—For purposes of any agreement under this Act—

(1) the amount of emergency unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependent's allowances) payable to such individual during such individual's benefit year under the State law for a week of total unemployment;

(2) the terms and conditions of the State law which apply to claims for extended compensation and to the payment thereof shall apply to claims for emergency unemployment compensation and the payment thereof, except where inconsistent with the provisions of this Act, or with the regulations or operating instructions of the Secretary promulgated to carry out this Act; and

(3) the maximum amount of emergency unemployment compensation payable to any individual for whom an account is established under section 3 shall not exceed the amount established in such account for such individual.

(e) ELECTION.—Notwithstanding any other provision of Federal law (and if State law permits), the Governor of a State in a 7-percent period or an 8-percent period, as defined in section 3(c), is authorized to and may elect to trigger off an extended compensation period in order to provide payment of emergency unemployment compensation to individuals who have exhausted their rights to regular compensation under State law.

**SEC. 3. EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT.**

(a) IN GENERAL.—Any agreement under this Act shall provide that the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment compensation account with respect to such individual's benefit year.

(b) AMOUNT IN ACCOUNT.—

(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

(A) 100 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which the individual most recently received regular compensation, or

(B) the applicable limit times the individual's average weekly benefit amount for the benefit year.

(2) APPLICABLE LIMIT.—For purposes of this section—

(A) IN GENERAL.—Except as provided in this paragraph, the applicable limit shall be determined under the following table:

| In the case of weeks beginning during a: | The applicable limit is: |
|---|---|
| 8-percent period ..... | 20 |
| 7-percent period ..... | 13 |
| 6-percent period ..... | 7 |
| Other period ..... | 4. |

(B) APPLICABLE LIMIT NOT REDUCED.—An individual's applicable limit for any week shall in no event be less than the highest applicable limit in effect for any prior week for which emergency unemployment compensation was payable to the individual from the account involved.

(C) INCREASE IN APPLICABLE LIMIT.—If the applicable limit in effect for any week is higher than the applicable limit for any prior week, the applicable limit shall be the higher applicable limit, reduced (but not below zero) by the number of prior weeks for which emergency unemployment compensation was paid to the individual from the account involved.

(3) REDUCTION FOR EXTENDED BENEFITS.—The amount in an account under paragraph (1) shall be reduced (but not below zero) by the aggregate amount of extended compensation (if any) received by such individual relating to the same benefit year under the Federal-State Extended Unemployment Compensation Act of 1970.

(4) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

(c) DETERMINATION OF PERIODS.—

(1) IN GENERAL.—For purposes of this section, the terms "8-percent period", "7-percent period", "6-percent period", and "other period" mean, with respect to any State, the period which—

(A) begins with the second Sunday of the month after the first month during which the applicable trigger for such period is on, and

(B) ends with the Saturday immediately preceding the second Sunday of the month after the first month during which the applicable trigger for such period is off.

(2) APPLICABLE TRIGGER.—In the case of an 8-percent period, 7-percent period, 6-percent period, or other period, as the case may be, the applicable trigger is on for any week with respect to any such period if the average rate of total unemployment in the State for the period consisting of the most recent 6-calendar month period for which data are available—

(A) equals or exceeds 6 percent, and

(B) falls within the applicable range (as defined in paragraph (3)).

Subparagraph (A) shall only apply in the case of an 8-percent period, 7-percent period, or 6-percent period.

(3) APPLICABLE RANGE.—For purposes of this subsection, the applicable range is as follows:

| In the case of a: | The applicable range is: |
|---|---|
| 8-percent period ..... | A rate equal to or exceeding 8 percent. |
| 7-percent period ..... | A rate equal to or exceeding 7 percent but less than 8 percent. |
| 6-percent period ..... | A rate equal to or exceeding 6 percent but less than 7 percent. |
| Other period ..... | A rate less than 6 percent. |

(4) SPECIAL RULES FOR DETERMINING PERIODS.—

(A) MINIMUM PERIOD.—Except as provided in subparagraph (B), if for any week beginning after October 5, 1991, an 8-percent period, 7-percent period, 6-percent period, or other period, as the case may be, is triggered on with respect to such State, such period shall last for not less than 13 weeks.

(B) EXCEPTION IF APPLICABLE RANGE INCREASES.—If, but for subparagraph (A), another period with a higher applicable range would be in effect for such State, such other period shall take effect without regard to subparagraph (A).

(5) NOTIFICATION BY SECRETARY.—When a determination has been made that an 8-percent period, 7-percent period, 6-percent period, or other period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no emergency unemployment compensation shall be payable to any individual under this Act for any week—

(A) beginning before the later of—

(i) October 6, 1991, or

(ii) the first week following the week in which an agreement under this Act is entered into, or

(B) beginning after July 4, 1992.

(2) TRANSITION.—In the case of an individual who is receiving emergency unemployment compensation for a week which includes July 4, 1992, such compensation shall continue to be payable to such individual in accordance with subsection (b) for any week beginning in a period of consecutive weeks for each of which the individual meets the eligibility requirements of this Act.

(3) REACHBACK PROVISIONS.—(A) IN GENERAL.—If—

(i) any individual exhausted such individual's rights to regular compensation (or extended compensation) under the State law after March 31, 1991, and before the first week following October 5, 1991 (or, if later, the week following the week in which the agreement under this Act is entered into), and

(ii) a period described in subsection (c)(2)(A) is in effect with respect to the State for such following week,

such individual shall be entitled to emergency unemployment compensation under this Act in the same manner as if such individual's benefit year ended no earlier than the last day of such following week.

(B) LIMITATION OF BENEFITS.—In the case of an individual who has exhausted such individual's rights to both regular and extended compensation, any emergency unemployment compensation payable under subparagraph (A) shall be reduced in accordance with subsection (b)(3).

**SEC. 4. PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF EMERGENCY UNEMPLOYMENT COMPENSATION.**

(a) GENERAL RULE.—There shall be paid to each State which has entered into an agreement under this Act an amount equal to 100 percent of the emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

(b) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this Act or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this Act in respect of such compensation.

(c) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this Act shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this Act for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

**SEC. 5. FINANCING PROVISIONS.**

(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this Act.

(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this Act. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as established by section 905 of the Social Security Act) to the account of such State in the Unemployment Trust Fund.

(c) ASSISTANCE TO STATES.—There are hereby authorized to be appropriated without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act) in meeting the costs of administration of agreements under this Act.

**SEC. 6. FRAUD AND OVERPAYMENTS.**

(a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of emergency unemployment compensation under this Act to which he was not entitled, such individual—

(1) shall be ineligible for further emergency unemployment compensation under this Act in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

(b) REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment compensation under this Act to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(1) the payment of such emergency unemployment compensation was without fault on the part of any such individual, and

(2) such repayment would be contrary to equity and good conscience.

(c) RECOVERY BY STATE AGENCY.—

(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any emergency unemployment compensation payable to such individual under this Act or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the emergency unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

**SEC. 7. DEFINITIONS.**

For purposes of this Act:

(1) IN GENERAL.—The terms "compensation", "regular compensation", "extended compensation", "additional compensation", "benefit year", "base period", "State", "State agency", "State law", and "week" have the meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

(2) ELIGIBILITY PERIOD.—An individual's eligibility period shall consist of the weeks in the individual's benefit year which begin in an 8-percent period, 7-percent period, 6-percent period, or other period under this Act and, if the individual's benefit year ends on or after October 5, 1991, any weeks thereafter which begin in any such period. In no event shall an individual's period of eligibility include any weeks after the 39th week after the end of the benefit year for which the individual exhausted his rights to regular compensation or extended compensation.

(3) RATE OF TOTAL UNEMPLOYMENT.—The term "rate of total unemployment" means the average unadjusted total rate of unemployment (as determined by the Secretary) for a State for the period consisting of the most recent 6-calendar month period for which data are available.

**SEC. 8. PAYMENTS OF UNEMPLOYMENT COMPENSATION TO FORMER MEMBERS OF THE ARMED FORCES.**

(a) REPEAL OF CERTAIN LIMITATIONS.—Subsection (c) of section 8521 of title 5, United States Code, is hereby repealed.

(b) REDUCTION IN LENGTH OF REQUIRED ACTIVE DUTY BY RESERVES.—Paragraph (1) of section 8521(a) of such title 5 is amended by striking "180 days" and inserting "90 days".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to weeks of unemployment beginning on or after the date of the enactment of this Act.

**SEC. 9. ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION.**

Section 908 of the Social Security Act is amended to read as follows:

"ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION

"SEC. 908. (a) ESTABLISHMENT.—Not later than February 1, 1992, and every 4th year thereafter (but not before February 1 of such 4th year), the Secretary of Labor shall establish an advisory council to be known as the Advisory Council on Unemployment Compensation (referred to in this section as the 'Council').

"(b) FUNCTION.—It shall be the function of each Council to evaluate the unemployment compensation program, including the purpose, goals, countercyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and any other aspects of the program and to make recommendations for improvement.

"(c) MEMBERS.—

"(1) IN GENERAL.—Each Council shall consist of 11 members as follows:

"(A) 5 members appointed by the President, to include representatives of business, labor, State government, and the public.

"(B) 3 members appointed by the President pro tempore of the Senate, in consultation with the Chairman of the Committee on Finance.

"(C) 3 members appointed by the Speaker of the House, in consultation with the Chairman of the Committee on Ways and Means.

"(2) QUALIFICATIONS.—In appointing members under subparagraphs (B) and (C), the President pro tempore of the Senate and the Speaker of the House shall each appoint—

"(A) 1 representative of the interests of business,

"(B) 1 representative of the interests of labor, and

"(C) 1 representative of the interests of State governments.

"(3) VACANCIES.—A vacancy in any Council shall be filled in the manner in which the original appointment was made.

"(4) CHAIRMAN.—The President shall appoint the Chairman.

"(d) STAFF AND OTHER ASSISTANCE.—

"(1) IN GENERAL.—Each council may engage any technical assistance (including actuarial services) required by the Council to carry out its functions under this section.

"(2) ASSISTANCE FROM SECRETARY OF LABOR.—The Secretary of Labor shall provide each Council with any staff, office facilities, and other assistance, and any data prepared by the Department of Labor, required by the Council to carry out its functions under this section.

"(e) COMPENSATION.—Each member of any Council—

"(1) shall be entitled to receive compensation at rates fixed by the Secretary of Labor (but not exceeding the rate of pay for level V of the Executive Schedule under section 5316 of title 5, United States Code) for each day (including travel time) during which such member is engaged in the actual performance of duties vested in the Council, and

"(2) while engaged in the performance of such duties away from such member's home or regular place of business, shall be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

"(f) REPORT.—

"(1) IN GENERAL.—not later than February 1 of the 2nd year following the year in which any Council is required to be established under subsection (a), the Council shall submit to the President and the Congress a report setting forth the findings and recommendations of the Council as a result of its evaluation of the unemployment compensation program under this section.".

"(2) REPORT OF FIRST COUNCIL.—The Council shall include in its February 1, 1994, report findings and recommendations with respect to determining eligibility for extended unemployment benefits on the basis of unemployment statistics for regions, States, or subdivisions of States.".

**SEC. 10. EMERGENCY DESIGNATION.**

(a) EMERGENCY DESIGNATION.—Pursuant to sections 251(b)(2)(D)(i) and 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Congress hereby designates all direct spending amounts provided by this Act (for all fiscal years) and all appropriations authorized by this Act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EFFECTIVENESS.—Notwithstanding any other provision of law or any other provision of this Act, none of the preceding sections of this Act shall take effect unless, not later than the date of the enactment of this Act, the President submits to the Congress a written designation of all direct spending amounts provided by this Act (for all fiscal years) and all appropriations authorized by this Act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

COMMITTEE MODIFICATION

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, in accordance with the agreement, I send a modification to the substitute to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. This is the modification; not an amendment. That is in line with the agreement.

The modification to the committee amendment in the nature of a substitute is as follows:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Emergency Unemployment Compensation Act of 1991".

**SEC. 2. FEDERAL-STATE AGREEMENTS.**

(a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this Act with the Secretary of Labor (hereafter in this Act referred to as the "Secretary"). Any State which is a party to an agreement under this Act may, upon providing 30 days written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF AGREEMENT.—Any agreement under subsection (a) shall provide that the State agency of the State will make payments of emergency unemployment compensation—

(1) to individuals who—

(A) have exhausted all rights to regular compensation under the State law;

(B) have no rights to compensation (including both regular compensation and extended compensation) with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law (and are not paid or entitled to be paid any additional compensation under any State or Federal law); and

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(2) for any week of unemployment which begins in the individual's period of eligibility (as defined in section 7(2)).

(c) EXHAUSTION OF BENEFITS.—For purposes of subsection (b)(1)(A), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

(2) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(d) WEEKLY BENEFIT AMOUNT.—For purposes of any agreement under this Act—

(1) the amount of emergency unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependent's allowances) payable to such individual during such individual's benefit year under the State law for a week of total unemployment;

(2) the terms and conditions of the State law which apply to claims for extended compensation and to the payment thereof shall apply to claims for emergency unemployment compensation and the payment thereof, except where inconsistent with the provisions of this Act, or with the regulations or operating instructions of the Secretary promulgated to carry out this Act; and

(3) the maximum amount of emergency unemployment compensation payable to any individual for whom an account is established under section 3 shall not exceed the amount established in such account for such individual.

(e) ELECTION.—Notwithstanding any other provision of law, the Governor of a State, which is in a 7-percent period or an 8-percent period (as defined in section 3(c)), is authorized to and may elect to trigger off an extended compensation period in order to provide payment of emergency unemployment compensation to an individual who has exhausted his rights to regular compensation under State law.

**SEC. 3. EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT.**

(a) IN GENERAL.—Any agreement under this Act shall provide that the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment compensation account with respect to such individual's benefit year.

(b) AMOUNT IN ACCOUNT.—

(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

(A) 100 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which the individual most recently received regular compensation, or

(B) the applicable limit times the individual's average weekly benefit amount for the benefit year.

(2) APPLICABLE LIMIT.—For purposes of this section—

(A) IN GENERAL.—Except as provided in this paragraph, the applicable limit shall be determined under the following table:

| In the case of weeks beginning during a: | The applicable limit is: |
|---|---|
| 8-percent period ..... | 20 |
| 7-percent period ..... | 13 |
| 6-percent period ..... | 7 |
| Other period ..... | 4. |

(B) APPLICABLE LIMIT NOT REDUCED.—An individual's applicable limit for any week shall in no event be less than the highest applicable limit in effect for any prior week for which emergency unemployment compensation was payable to the individual from the account involved.

(C) INCREASE IN APPLICABLE LIMIT.—If the applicable limit in effect for any week is higher than the applicable limit for any prior week, the applicable limit shall be the higher applicable limit, reduced (but not below zero) by the number of prior weeks for which emergency unemployment compensation was paid to the individual from the account involved.

(3) REDUCTION FOR EXTENDED BENEFITS.—The amount in an account under paragraph (1) shall be reduced (but not below zero) by the aggregate amount of extended compensation (if any) received by such individual relating to the same benefit year under the Federal-State Extended Unemployment Compensation Act of 1970.

(4) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount

of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

(c) DETERMINATION OF PERIODS.—

(1) IN GENERAL.—For purposes of this section, the terms "8-percent period", "7-percent period", "6-percent period", and "other period" mean, with respect to any State, the period which—

(A) begins with the second Sunday of the month after the first month during which the applicable trigger for such period is on, and

(B) ends with the Saturday immediately preceding the second Sunday of the month after the first month during which the applicable trigger for such period is off.

(2) APPLICABLE TRIGGER.—In the case of an 8-percent period, 7-percent period, 6-percent period, or other period, as the case may be, the applicable trigger is on for any week with respect to any such period if the average rate of total unemployment in the State for the period consisting of the most recent 6-calendar month period for which data are available—

(A) equals or exceeds 6 percent, and

(B) falls within the applicable range (as defined in paragraph (3)).

Subparagraph (A) shall only apply in the case of an 8-percent period, 7-percent period, or 6-percent period.

(3) APPLICABLE RANGE.—For purposes of this subsection, the applicable range is as follows:

| In the case of a: | The applicable range is: |
|---|---|
| 8-percent period ..... | A rate equal to or exceeding 8 percent. |
| 7-percent period ..... | A rate equal to or exceeding 7 percent but less than 8 percent. |
| 6-percent period ..... | A rate equal to or exceeding 6 percent but less than 7 percent. |
| Other period ..... | A rate less than 6 percent. |

(4) SPECIAL RULES FOR DETERMINING PERIODS.—

(A) MINIMUM PERIOD.—Except as provided in subparagraph (B), if for any week beginning after October 5, 1991, an 8-percent period, 7-percent period, 6-percent period, or other period, as the case may be, is triggered on with respect to such State, such period shall last for not less than 13 weeks.

(B) EXCEPTION IF APPLICABLE RANGE INCREASES.—If, but for subparagraph (A), another period with a higher applicable range would be in effect for such State, such other period shall take effect without regard to subparagraph (A).

(5) NOTIFICATION BY SECRETARY.—When a determination has been made that an 8-percent period, 7-percent period, 6-percent period, or other period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no emergency unemployment compensation shall be payable to any individual under this Act for any week—

(A) beginning before the later of—

(i) October 6, 1991, or

(ii) the first week following the week in which an agreement under this Act is entered into, or

(B) beginning after July 4, 1992.

(2) TRANSITION.—In the case of an individual who is receiving emergency unemployment compensation for a week which includes July 4, 1992, such compensation shall continue to be payable to such individual in accordance with subsection (b) for any week beginning in a period of consecutive weeks for each of which the individual meets the eligibility requirements of this Act.

(3) REACHBACK PROVISIONS.—(A) IN GENERAL.—If—

(i) any individual exhausted such individual's rights to regular compensation (or extended compensation) under the State law after March 31, 1991, and before the first week following October 5, 1991 (or, if later, the week following the week in which the agreement under this Act is entered into), and

(ii) a period described in subsection (c)(2)(A) is in effect with respect to the State for such following week,

such individual shall be entitled to emergency unemployment compensation under this Act in the same manner as if such individual's benefit year ended no earlier than the last day of such following week.

(B) LIMITATION OF BENEFITS.—In the case of an individual who has exhausted such individual's rights to both regular and extended compensation, any emergency unemployment compensation payable under subparagraph (A) shall be reduced in accordance with subsection (b)(3).

**SEC. 4. PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF EMERGENCY UNEMPLOYMENT COMPENSATION.**

(a) GENERAL RULE.—There shall be paid to each State which has entered into an agreement under this Act an amount equal to 100 percent of the emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

(b) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this Act or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this Act in respect of such compensation.

(c) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this Act shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this Act for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

**SEC. 5. FINANCING PROVISIONS.**

(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this Act.

(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this Act. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as established by section 905 of the Social Security Act) to the account of such State in the Unemployment Trust Fund.

(c) ASSISTANCE TO STATES.—There are hereby authorized to be appropriated without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act) in meeting the costs of administration of agreements under this Act.

**SEC. 6. FRAUD AND OVERPAYMENTS.**

(a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of emergency unemployment compensation under this Act to which he was not entitled, such individual—

(1) shall be ineligible for further emergency unemployment compensation under this Act in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

(b) REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment compensation under this Act to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(1) the payment of such emergency unemployment compensation was without fault on the part of any such individual, and

(2) such repayment would be contrary to equity and good conscience.

(c) RECOVERY BY STATE AGENCY.—

(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any emergency unemployment compensation payable to such individual under this Act or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the emergency unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

**SEC. 7. DEFINITIONS.**

For purposes of this Act:

(1) IN GENERAL.—The terms "compensation", "regular compensation", "extended compensation", "additional compensation", "benefit year", "base period", "State", "State agency", "State law", and "week" have the meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

(2) ELIGIBILITY PERIOD.—An individual's eligibility period shall consist of the weeks in the individual's benefit year which begin in an 8-percent period, 7-percent period, 6-percent period, or other period under this Act and, if the individual's benefit year ends on or after August 31, 1991, any weeks thereafter which begin in any such period. In no event shall an individual's period of eligibility include any weeks after the 39th week after the end of the benefit year for which the individual exhausted his rights to regular compensation or extended compensation.

(3) RATE OF TOTAL UNEMPLOYMENT.—The term "rate of total unemployment" means the average unadjusted total rate of unemployment (as determined by the Secretary) for a State for the period consisting of the most recent 6-calendar month period for which data are available.

**SEC. 8. PAYMENTS OF UNEMPLOYMENT COMPENSATION TO FORMER MEMBERS OF THE ARMED FORCES.**

(a) REPEAL OF CERTAIN LIMITATIONS.—Subsection (c) of section 8521 of title 5, United States Code, is hereby repealed.

(b) REDUCTION IN LENGTH OF REQUIRED ACTIVE DUTY BY RESERVES.—Paragraph (1) of section 8521(a) of such title 5 is amended by striking "180 days" and inserting "90 days".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to weeks of unemployment beginning on or after the date of the enactment of this Act.

**SEC. 9. ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION.**

Section 908 of the Social Security Act is amended to read as follows:

"ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION

"SEC. 908. (a) ESTABLISHMENT.—Not later than February 1, 1992, and every 4th year thereafter (but not before February 1 of such 4th year), the Secretary of Labor shall establish an advisory council to be known as the Advisory Council on Unemployment Compensation (referred to in this section as the 'Council').

"(b) FUNCTION.—It shall be the function of each Council to evaluate the unemployment compensation program, including the purpose, goals, countercyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and any other aspects of the program and to make recommendations for improvement.

"(c) MEMBERS.—

"(1) IN GENERAL.—Each Council shall consist of 11 members as follows:

"(A) 5 members appointed by the President, to include representatives of business, labor, State government, and the public.

"(B) 3 members appointed by the President pro tempore of the Senate, in consultation with the Chairman and ranking member of the Committee on Finance.

"(C) 3 members appointed by the Speaker of the House, in consultation with the Chairman and ranking member of the Committee on Ways and Means.

"(2) QUALIFICATIONS.—In appointing members under subparagraphs (B) and (C), the President pro tempore of the Senate and the Speaker of the House shall each appoint—

"(A) 1 representative of the interests of business,

"(B) 1 representative of the interests of labor, and

"(C) 1 representative of the interests of State governments.

"(3) VACANCIES.—A vacancy in any Council shall be filled in the manner in which the original appointment was made.

"(4) CHAIRMAN.—The President shall appoint the Chairman.

"(d) STAFF AND OTHER ASSISTANCE.—

"(1) IN GENERAL.—Each council may engage any technical assistance (including actuarial services) required by the Council to carry out its functions under this section.

"(2) ASSISTANCE FROM SECRETARY OF LABOR.—The Secretary of Labor shall provide each Council with any staff, office facilities, and other assistance, and any data prepared by the Department of Labor, required by the Council to carry out its functions under this section.

"(e) COMPENSATION.—Each member of any Council—

"(1) shall be entitled to receive compensation at the rate of pay for level V of the Executive Schedule under section 5316 of title 5, United States Code) for each day (including travel time) during which such member is engaged in the actual performance of duties vested in the Council, and

"(2) while engaged in the performance of such duties away from such member's home or regular place of business, shall be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

"(f) REPORT.—

"(1) IN GENERAL.—Not later than February 1 of the second year following the year in which any Council is required to be established under subsection (a), the Council shall submit to the President and the Congress a report setting forth the findings and recommendations of the Council as a result of its evaluation of the unemployment compensation program under this section.

"(2) REPORT OF FIRST COUNCIL.—The Council shall include in its February 1, 1994, report findings and recommendations with respect to determining eligibility for extended unemployment benefits on the basis of unemployment statistics for regions, States, or subdivisions of States.".

**SEC. 10. EMERGENCY DESIGNATION.**

(a) EMERGENCY DESIGNATION.—Pursuant to sections 251(b)(2)(D)(i) and 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Congress hereby designates all direct spending amounts provided by this Act (for all fiscal years) and all appropriations authorized by this Act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EFFECTIVENESS.—Notwithstanding any other provision of law or any other provision of this Act, none of the preceding sections of this Act shall take effect unless, not later than the date of the enactment of this Act, the President submits to the Congress a written designation of all direct spending amounts provided by this Act (for all fiscal years) and all appropriations authorized by this Act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, on behalf of myself, the distinguished Senator from Oregon, Mr. PACKWOOD, Senator RIEGLE, the majority leader, and other cosponsors, I am pleased to offer a modification of the pending committee substitute for S. 1554, a bill to provide emergency unemployment compensation benefits to American workers whose benefits have been exhausted under the current program.

The modification moves the effective date forward to September 1, instead of October 6, as in the reported substitute bill.

For many months now, every American has been hoping the recession will end soon, that recovery will be swift and robust. There are encouraging signs the recession may have bottomed out. But there are other signs the recovery will be muddled—benefiting some sectors of the economy but not others—and that it won't be nearly so robust as the 6.5-percent growth rate typical of postwar recoveries.

Under the best of situations, employment is not one of the encouraging signs. If history is any guide, workers will still be losing their jobs after the recession is technically over. The number of workers who ran out of unemployment benefits peaked 7 months after the recession ended in 1982.

This past June, the unemployment rate rose to 7 percent, and the number of unemployed workers reached 8.7 million. Joblessness today is at its highest point since the mid-1980's. And new claims for unemployment benefits rose by 30,000 last week.

Worse yet is what happens to workers who become unemployed under our current system of unemployment compensation. Over 1.6 million have exhausted their unemployment benefits since January. The Labor Department estimates that a total of 3.1 million will exhaust their benefits this fiscal year—and another 3.4 million will lose theirs next year. It's a tough time to be out of work in America, and unless we do something soon to make additional benefits available to those unemployed workers who are running out of benefits, times are going to get even tougher.

The data demonstrate clearly that the unemployment program is not working the way it should. We have a regular State program that pays unemployed workers 26 weeks of benefits. If an unemployed worker in a State with high unemployment exhausts these benefits without finding work, he or she is supposed to get 13 weeks of extended benefits.

Today, despite a recession and a 7-percent unemployment rate, only three States—Alaska, Maine, and Rhode Island—qualify for the extended benefits program. Only these three States are able to provide additional, federally supported benefits to unemployed workers who have used all their regular benefits and have nowhere else to turn. That's down from eight States only a few weeks ago, and the Labor

Department projects that by midfall, no States will qualify for extended benefits.

In my view, this situation qualifies as an emergency under the Budget Act definition. And on Thursday of last week, 16 of the 20 members of the Finance Committee agreed and voted to report the emergency unemployment compensation bill which you have before you today.

Mr. President, enactment of the Finance Committee bill is needed to provide badly needed support to unemployed Americans—those individuals and families who have run out of benefits under the current program. It does so by using the $7.7 billion in Federal funds that, according to the Department of Labor, will have accumulated in the extended unemployment benefits trust fund by the end of this fiscal year. That $7.7 billion is money paid by employers across the Nation for just this purpose: Helping people who have exhausted their regular unemployment benefits and still cannot find work.

The bill proposes a change in the trigger that determines whether a State can drawdown Federal funds and pay additional benefits. Under S. 1554, the total unemployment rate, as opposed to the insured unemployment rate, is used to measure the severity of unemployment. This total rate, or TUR, counts the people we are trying to help, the people who have exhausted their benefits. It makes it possible to closely target benefits based on the real level of unemployment and the labor market that exists in each State. The extended benefit program, using insured unemployment as a trigger, has been unable to do that. Perversely, the insured unemployment rate tends to drop when unemployed workers exhaust their regular benefits, because they are no longer counted.

Based on TUR data for the 6-month period December 1990 through May 1991—and Senators should be aware that we are using a rolling average that will change over time—here is what would be provided under S. 1554 to long-term unemployment workers who have exhausted their benefits.

Unemployed workers who lived in the 7 States with unemployment rates of 8 percent or more would receive 20 weeks of emergency benefits in addition to the weeks of regular benefits for which they qualified under prior law;

Unemployed workers in 10 States—those with unemployment rates of 7 to 8 percent—would be eligible for 13 weeks of additional emergency benefits;

Unemployed workers in 19 States—those with unemployment rates of 6 to 7 percent—would receive 7 weeks of emergency benefits; and

Unemployed workers in the remaining 14 States would be eligible for 4 weeks of emergency benefits.

I want to make clear that most of the $5.2 billion cost of this emergency proposal—close to 90 percent—goes to provide benefits to workers living in States with unemployment rates of 6 percent or higher.

But the committee felt it was also important to provide benefits for individuals in States with unemployment below 6 percent, because even in States with relatively low rates of unemployment there are very serious pockets of high unemployment. For example, in April, the month for which we have the most recent data, Minnesota had an unemployment rate of around 5 percent, but in Clearwater County the rate was more than 17 percent. Similarly, the unemployment rate in Arizona was 4.5 percent, but in Apache County it was over 11 percent and it exceeded 15 percent in Yuma County.

Often a recession hits particular industries in a way that can cause severe problems in particular localities. For example, if the automobile industry suffers, that obviously drives up unemployment in Michigan. But there are automobile plants in other States as well, and an auto worker in say, Missouri or Tennessee, may find that there is no work for which he is qualified in the area where he lives, particularly if the auto plant is the major employer there.

While it is essential to aid those unemployed workers who will exhaust their unemployment benefits in the future, it is perhaps even more important to aid those who have already run out of benefits. For this reason, S. 1554 provides that when the emergency unemployment program goes into effect, it will reach back to include workers who exhausted their benefits on or after April 1 of this year. Reach back benefits will go to workers in States with all but the lowest levels of unemployment.

Because the bill is designed to address today's high levels of unemployment, that we hope will decline as the overall economy improves, this emergency program is limited in duration. It will take effect in October and sunset on July 4, 1992.

A total of 30.2 million weeks of benefits will be provided under this bill. That's equal to about 25 percent of all of the unemployment benefits that have been paid since the beginning of fiscal 1991.

The emergency benefits to be paid under S. 1554 are fully financed with Federal funds, available in the existing extended benefits trust fund. More than enough money has accumulated, and the account is steadily growing. Even after enactment of S. 1554, the Department of Labor tells us the reserve level will be fully replenished by fiscal 1994. In fact, after funding emergency unemployment benefits the account is projected to grow to a level of $9 billion by the end of fiscal 1994—better than $1 billion more than it presently contains.

In addition to emergency unemployment compensation benefits, the Finance Committee bill includes a provision to treat more equitably those members of our armed services who are unemployed after leaving the service. Veterans of Desert Storm and others who leave the armed services must now wait 4 weeks before they are eligible for regular unemployment benefts, compared to 1 week for civilians, and are entitled to only half as many weeks of benefits as civilians; 13 weeks rather than the normal 26. The bill would equalize the waiting period and weeks of benefit eligibility for veterans who are otherwise eligible for regular unemployment benefits under present law. It would, in addition, reduce the time reserve members must spend on active duty to be considered eligible for regular benefits. This provision would help to ensure that those members of the reserves who were called to active duty in Desert Storm receive the same unemployment protection as members of the regular armed forces and civilians.

I, for one, would have a hard time looking an unemployed veteran of Operation Desert Storm in the eye and saying that the Congress supports continuing these inequities in the law. By the way, these program changes in the bill apply not just to veterans of Desert Storm, but to all members of our armed forces. As pointed out by the national executive director of AMVETS in his letter supporting the bill:

* * * the combination of Department of Defense 'downsizing' and a less-than-favorable employment market (for the foreseeable future) makes the provision of unemployment compensation to veterans that much more necessary. To ask active-duty military members—individuals whose livelihoods are just as much at risk as any civilian—to forsake basic income protection is simply unfair. At a minimum, this program will close this blatantly unfair exemption.

The bill also provides for an unemployment compensation advisory council. Unfortunately, Government waits for a recession to focus on the unemployment program. Then we find, as we have today, that the program doesn't work as well as it should and that we don't have time for the studies and hearings and debate needed to develop the kinds of permanent, structural improvements that are needed.

To help us deal with basic concerns about the overall effectiveness of the unemployment compensation program, S. 1554 establishes a bipartisan unemployment compensation advisory council. It will be composed of five members appointed by the President, three by the Senate, and three by the House of Representatives, and will convene every 4 years, beginning in 1992.

The unemployment advisory council is in many ways analogous to the Social Security advisory council. Its charter will be similarly broad and inclusive: to deal with the unemploy-

ment program's basic goals, functions, and structural issues and make recommendations for permanent improvements.

Finally, Mr. President, let me address the question of why we are moving this bill under the emergency authority provided in the Budget Enforcement Act rather than following the procedure for pay as you go. I agree with the chairman of the Budget Committee that the emergency authority included in last year's budget agreement was created precisely to enable the Congress and the President to respond to the kind of situation we face today.

In order to make a difference for the millions of Americans who are out of work right now, immediate action is needed. The long-term unemployed must be able to rely on the unemployment insurance program to help them meet needs that are real and serious—and that were not foreseen last fall when Congress and the President negotiated the budget agreement. The taxes to meet such an emergency have already been collected from employers, and the reserves presently building up in the Federal unemployment trust funds are more than sufficient to meet the $5.8 billion 5-year costs of the benefits provided by this bill. Further, taxing employers twice to meet pay as you go requirements would not only be inequitable and unnecessary, but would also be counterproductive at a time when what we need is an economic stimulus to help reduce unemployment.

Earlier this year, the President asked Congress to pass emergency legislation providing assistance to the Kurds, the Israelis, the Turks and others whose circumstances he felt merited our concern and compassion. We agreed with the President and joined him in declaring an emergency. Now, we're asking the President to join us in recognizing that American workers also need our help in time of trouble.

I note that OMB Director Darman, while not supporting this legislation as an emergency measure, has written to me and other Senators indicating his chief concern is the issue of emergency designation, not the substance of this bill. Specifically, his letter states that the President's senior advisers would recommend that the President not accept an emergency designation for expansion of unemployment insurance. I am more than willing to discuss the issue further with the administration and to consider any proposal they may wish to offer regarding an offset. But time is short, and I hope that Director Darman and other advisers to the President offer their proposals quickly so we can complete action and send this bill to the President before the end of the week.

I hope that the President can be persuaded that it is important to extend a hand to the millions of Americans who can't find work, who have exhausted their jobless benefits and who are counting on us to ensure that the unemployment insurance program works when they need it most.

Mr. President, I believe the Senate should give swift approval to S. 1554 and proceed to conference with the House as soon as possible.

I ask unanimous consent that a description of the bill, as reported by the committee, be inserted in the RECORD at this point.

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

THE EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1991 (S. 1554)—GENERAL DESCRIPTION

The Emergency Unemployment Compensation Act of 1991 (S. 1554), as reported by the Finance Committee, has three objectives. First, it establishes a time-limited program of emergency unemployment compensation benefits to assist long-term unemployed workers who have exhausted their benefits under the current unemployment program. Second, it provides equal treatment for former members of the armed forces who currently must wait longer to receive fewer weeks of benefits than civilians who become unemployed. Third, the bill establishes a bipartisan unemployment compensation advisory council which will meet every four years to review the status of the unemployment compensation program and recommend improvements.

All spending authorized under the bill is designated as emergency requirements, as provided under the Budget Enforcement Act of 1990. None of the provisions will go into effect unless the President concurs in this designation. The emergency unemployment compensation benefits authorized under the bill would be Federally financed from existing balances in the Extended Unemployment Compensation Account administered by the Department of Labor.

I. EMERGENCY UNEMPLOYMENT COMPENSATION

*Present Law.*—Under current law, the Extended Benefits program provides for the payment of a maximum of 13 additional weeks of benefits after an unemployed worker has received the 26 weeks (maximum) of regular benefits provided under State law. The extended benefits program is activated when: (1) a State's insured unemployment rate has averaged 5 percent for 13 consecutive weeks, and (2) that rate is 20 percent higher than the State's average insured unemployment rate for the corresponding 13-week period in the 2 preceding years. At State option, States may apply an alternative trigger mechanism. Extended benefits can also be paid if a State's insured unemployment rate is 6 percent, even though the rate is less than 20 percent higher than the rate in the preceding 2 years. Thirty seven States, the District of Columbia, Puerto Rico, and the Virgin Islands have adopted this alternative trigger mechanism.

Fifty percent of the benefits paid under the Extended Benefits program are paid with State funds. The remaining 50 percent is paid from Federal funds drawn from the Extended Unemployment Compensation Account in the Unemployment Trust Fund.

*Committee Bill.*—The bill establishes a temporary program of emergency unemployment compensation benefits, to be in effect from October 6, 1991 through July 4, 1992. The program would pay Federally-funded benefits to unemployed workers who had exhausted their benefit rights under the regular unemployment compensation program, and to certain workers who had exhausted the additional benefits available to them under the extended benefit program. It would also provide for a "reach back" to pay benefits to workers in States with high unemployment who had exhausted their unemployment benefits during the period between April 1, 1991 and the start of the new program.

Although there are signs that a slow recovery from the recession may have begun in some sectors of the economy, employment is not one of those sectors. In June, the unemployment rate climbed to 7 percent, and experience with past recessions suggests that it will remain high for some time to come. In the recession of 1981–1982, for example, the unemployment rate stayed above 10 percent for seven months after the end of the recession, and the number of Americans who ran out of unemployment benefits actually did not peak until half a year after the recession technically was over.

Over 3 million workers will have exhausted their unemployment benefits during fiscal year 1991. The Department of Labor estimates that another 3.4 million will exhaust their benefits during fiscal 1992. The extended benefits program, intended to provide additional weeks of benefits in times of high unemployment, is today paying benefits in only three States. The Department of Labor projects that by mid-fall, no States will be eligible to pay extended benefits, a situation that is expected to continue until some time in 1992.

*A. Scope and duration of emergency benefits*

Under the Committee bill, beginning in October all States would be eligible to provide emergency unemployment compensation benefits financed entirely by the Federal government. The bill would establish four levels of weeks of eligibility for these emergency benefits. The number of weeks of benefits payable to an unemployed worker who had exhausted regular unemployment benefits in a particular State would be determined by the average total unemployment rate, or TUR, in that State for the most recent six months for which data were available:

States with a TUR of 8 percent or higher would be eligible to provide 20 weeks of benefits;

States with a TUR of 7 percent would be eligible to provide 13 weeks of benefits;

States with a TUR of 6 percent would be eligible to provide 7 weeks of benefits; and

States with a TUR below 6 percent would be eligible to provide 4 weeks of benefits.

At any time that a State was not eligible for one of the three higher levels of benefits, unemployed workers in the State who exhausted their regular unemployment benefits would be eligible for 4 weeks of emergency benefits.

*B. Eligibility for emergency benefits*

Emergency unemployment compensation benefits would be paid to unemployed workers who exhaust their regular unemployment benefits during the effective period of the program, October 6, 1991 through July 4, 1992.

The bill also "reaches back" to aid workers in States with higher levels of unemployment who exhausted their regular unemployment benefits in the six month period prior to the start of the emergency program. Unemployed workers who exhausted benefits between April 1 and October 5, 1991 would be

eligible to receive emergency benefits in States that had an average TUR of at least 6 percent and had "triggered on" to 7, 13, or 20 weeks of emergency benefits.

Some unemployed workers who had received extended benefits and exhausted their eligibility for them, either during the effective period of the program or during the "reach back" period, would also be eligible for emergency benefits. The bill provides that the number of weeks of extended benefits the worker received would be deducted from the number of weeks of emergency benefits available in the State. The number of weeks of emergency benefits that remained, if any, would be paid to the worker.

*C. Other benefit provisions*

The Committee bill is structured to ensure that an unemployed worker receives the maximum number of weeks of benefits to which the worker is entitled, and to prevent any sudden and unexpected removal of a worker from benefit status if a State "triggers off" while the worker is in the middle of a benefit period. Once a State's average TUR has caused it to "trigger on" for a 7, 13, or 20 week period of emergency benefits, the State would remain triggered on for at least 13 weeks, even if its TUR declined during this period. Alternatively, if a State's average unemployment rate were to increase during that period, so that the State qualified for a higher number of weeks of benefits, workers in that State would receive the additional benefits. Further, once an unemployed worker became eligible for 7, 13, or 20 weeks of emergency benefits, the worker would be paid benefits for all weeks to which he or she was entitled, even if the State "triggered off" or the program expired before the worker had received the full number of weeks of benefits.

*D. Measure for triggering benefits*

The Committee bill uses a six-month moving average of a State's total unemployment rate (TUR) to determine the number of weeks of benefits which may be paid in the State. The measure used to trigger benefits under the present extended benefits program is the insured unemployment rate (IUR). The IUR measures only those workers who are claiming unemployment benefits. Unlike the total unemployment rate, it excludes workers who have exhausted their benefits, as well as new entrants and re-entrants into the labor force. Thus, the TUR has the advantage of being a better measure of the labor market conditions that an unemployed worker confronts when looking for a job.

In the 1980's there has been a growing gap between the IUR and the TUR, raising questions about the continuing accuracy of the IUR as a fair measure of a State's unemployment. An analysis by the Congressional Research Service shows that between the late 1960's and the early 1980's, the IUR generally ranged from about 41 to 56 percent of the TUR, and was considerably higher than that during the period of recession in the mid-1970's. However, since 1983 this percentage has declined significantly, ranging from 32 to 37 percent. The current recession caused a rise to a high of 49 percent in April. But this figure is below those of the two previous recessions, and the percentage has again declined into the mid-30's.

Out of concern for this growing divergence, the Department of Labor contracted with Mathematica Policy Research, Inc. for a study to determine the cause. The Mathematica study found the decline to be attributable to a number of factors, including: (1) changes in the structure of the economy, with workers moving from manufacturing, where a high proportion of the unemployed have traditionally received unemployment benefits, to the services sector, where the number is lower; (2) geographical movement of workers from the Northeast, where the ratio tends to be high to the South and West, where it tends to be lower; and (3) changes in State rules that tightened eligibility requirements. In addition, the Mathematica reviewers concluded that improvements in the Census survey instrument used to measure unemployment may have accounted for part of the decline.

Because some States have more restrictive unemployment compensation laws and procedures than others, workers in different States receive dissimilar treatment under the IUR trigger, which is the same Nationwide. States vary greatly in their eligibility rules. For example, workers in New Hampshire must earn as much as $2800 in a base period before they can qualify for benefits, while workers in Connecticut must earn $600. As another example, in some States a worker has to be available for full time work before he or she can qualify for benefits, thus ruling out eligibility for a parent who, because of child care needs, cannot take a full time job.

The TUR trigger provision in the bill is in effect only for the period of the emergency benefit program. The Committee expects that the issue of which trigger should be used in a permanent extended benefits program will be the subject of future study.

*E. Funding source for emergency benefits*

The Extended Unemployment Compensation Account, or EUCA, holds the Federal unemployment tax revenues paid by employers to fund the Federal portion of the extended benefit program. According to the Department of Labor, by the end of fiscal year 1991 the EUCA will have accumulated $7.7 billion. The Department of Labor estimates that, after financing the full cost of emergency benefits, the EUCA fund will have a balance of about $3.5 billion at the end of fiscal year 1992, and will grow to $9 billion by the end of fiscal 1994.

II. PAYMENT OF UNEMPLOYMENT COMPENSATION TO FORMER MEMBERS OF THE ARMED FORCES

*Present Law.*—Under current law, regular unemployment compensation benefits are payable to unemployed ex-service members who (1) are separated under honorable conditions (and in the case of officers, did not resign for the good of the service); and (2) have completed the first full term of active service they agreed to serve. Ex-service members who are separated prior to completing their first full term of active service can qualify for unemployment compensation benefits if they are separated under honorable conditions: (1) for the convenience of the Government under an early release program; (2) because of medical disqualifications, pregnancy, parenthood, or any service-incurred injury or disability; (3) because of hardship; or (4) if they have served for 365 continuous days, because of personality disorder or inaptitude.

Through most of the history of the Unemployment Compensation program, ex-service members received the same number of weeks of benefits as civilians, and benefits were payable to service members after waiting the same length of time as civilians had to wait. In 1982 the law was amended so that ex-service members must wait four weeks from the date of their separation from the service before they may receive benefits. Civilians serve a one-week waiting period. Ex-service members can receive regular unemployment compensation benefits based on employment in the military for a maximum of 13 weeks. Civilians receive regular unemployment benefits for up to 26 weeks.

To be used as the basis for paying unemployment compensation benefits, active duty service by a member of a reserve military component must have been for not less than 180 consecutive days.

*Committee Bill.*—The Committee bill would repeal the provision enacted in 1982 requiring ex-service members to wait four weeks before being eligible for unemployment compensation benefits, and limiting the duration of their benefits to 13 weeks. It would also reduce from 180 to 90 the number of consecutive days an individual in the reserve military component must serve on active duty before that service may be counted for purposes of eligibility for benefits.

III. ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION

*Present Law.*—Although current law authorizes the Secretary of Labor to establish a Federal Advisory Council for the purpose of reviewing the Federal-State program of unemployment compensation and making recommendations for improving the system, the authority is not being used. The last meeting of an Advisory Council appointed under the current authority occurred in 1981.

*Committee Bill.*—The Committee believes that the unemployment compensation program would benefit from the kind of continuous review that is provided for the Social Security system by its quadrennial Advisory Council. In the past, neither the Congress nor the Administration have focused on problems in the unemployment compensation program until times of recession, when typically there is insufficient time to conduct the hearings, studies, and evaluations necessary to consider long-term structural reforms. Therefore, the Committee proposes the establishment of an on-going bipartisan Advisory Council. The current law authority is repealed.

*A. Appointment and composition of the advisory council*

The Secretary of Labor would establish the first Advisory Council on Unemployment Compensation not later than February 1, 1992. Subsequent Advisory Councils would be appointed every fourth year after the appointment of the first Council. The Advisory Council is to be comprised of three members appointed by the President pro tempore of the Senate, in consultation with the Chairman and Ranking Member of the Committee on Finance; three members appointed by the Speaker of the House, in consultation with the Chairman and Ranking Member of the Committee on Ways and Means; and five members appointed by the President. The Chairman will be appointed by the President.

Selections made by the President shall include representatives of business, labor, State government, and the public. The President pro tempore of the Senate and the Speaker of the House shall each appoint one representative of business, one representative of labor, and one representative of the interests of State governments.

*B. Function of Advisory Council*

Under the Committee bill, it shall be the function of each Advisory Council to evaluate the unemployment compensation program, including the purpose, goals, countercyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and any other aspects of the program, and to make recommendations for im-

provement. The first Advisory Council established under this provision is specifically directed to include in its report findings and recommendations with respect to determining eligibility for extended unemployment benefits on the basis of unemployment statistics for regions, States, and subdivisions of States.

*C. Staff and other assistance*

Each Council may engage any technical assistance required by the Council to carry out its functions, including actuarial services. The Secretary of Labor shall provide each Council with any staff, office facilities, and other assistance, and any data prepared by the Department of Labor, that are required by the Council to carry out its functions.

IV. EMERGENCY DESIGNATION

Present Law.—Sections 251(b)(2)(D) and 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings), as amended by the Budget Enforcement Act of 1990, provide that if the President designates a provision as an emergency requirement, and the Congress also so designates in statute, then the spending authorized by any such provision will not be counted for purposes of the Gramm-Rudman-Hollings enforcement procedures.

Committee Bill.—The bill provides for designating all direct spending amounts and all appropriations authorized by the bill as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985. However, the bill also stipulates that no provisions will take effect unless, not later than the date of enactment, the President submits to the Congress a written designation of all spending authorized by the bill as emergency requirements within the meaning of the Budget Act. This latter provision will assure that, if the President does not concur with the Congress in the emergency designation, no spending can occur and there can be no sequester of entitlement programs under the Gramm-Rudman-Hollings enforcement procedures.

REPORT OF THE CONGRESSIONAL BUDGET OFFICE

CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, July 29, 1991.*

Hon. LLOYD BENTSEN,
*Chairman, Committee on Finance, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate of S. 1554, the Emergency Unemployment Compensation Act of 1991, as ordered reported by the Committee on Finance on July 25, 1991.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1554.

2. Bill title: Emergency Unemployment Compensation Act of 1991.

3. Bill status: As ordered reported by the Committee on Finance on July 25, 1991.

4. Bill purpose: To authorize new federal emergency unemployment compensation program, to provide additional weeks of unemployment benefits for former members of the armed services, and to establish a new Unemployment Compensation Advisory Council

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

| | 1991 | 1992 | 1993 | 1994 | 1995 | 1966 |
|---|---|---|---|---|---|---|
| Direct spending: | | | | | | |
| Federal Emergency unemployment compensation: | | | | | | |
| Estimated Budget Authority | 0 | 5150 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 0 | 5150 | 0 | 0 | 0 | 0 |
| Former members of the armed services: | | | | | | |
| Estimated Budget Authority | 10 | 115 | 115 | 120 | 120 | 125 |
| Estimated Outlays | 10 | 115 | 115 | 120 | 120 | 125 |
| Amounts subject to appropriations action: | | | | | | |
| Advisory council: | | | | | | |
| Estimated authorization | 0 | 1 | 1 | 0 | 0 | 1 |
| Estimated outlays | 0 | 1 | 1 | 0 | 0 | 1 |
| Administrative costs: | | | | | | |
| Estimated authorization | 0 | 175 | 0 | 0 | 0 | 0 |
| Estimated outlays | 0 | 175 | 0 | 0 | 0 | 0 |

*Basis of estimates*

Federal Emergency Unemployment Compensation. S. 1554 would authorize a temporary federal emergency unemployment compensation progam. This program would provide four tiers of benefits depending on a state's total unemployment rate (TUR). If a state's TUR equaled or exceeded 8 percent, then 20 weeks of additional benefits would be available in that state. If a state's TUR equaled or exceeded 7 percent and was less than 8 percent, then 13 weeks of additional benefits would be available in that state. If a state's TUR equaled or exceeded 6 percent and was less than 7 percent, then 7 additional weeks of benefits or exceeded 6 percent and was less than 7 percent, then 7 additional weeks of benefits would be available in that state. Finally, if a state's TUR was less than 6 percent, then 4 additional weeks of benefits would be available in that state. The Emergency Unemployment Compensation program would be in effect from October 1991 through June of 1992.

The estimated cost of this program is $5.10 billion in fiscal year 1992. This estimate assumes that the temporary program woud pay benefits for approximately 30 million weeks of unemployment that the average benefit amount would be $170 per person per week. The estimate was developed using a model that compares projected unemployment rates with the structure of rates that determines the four benefit tiers. The estimate is based on CBO's February 1991 economic assumptions that included a 6.6 percent unemployment rate for fiscal year 1992.

The estimated cost of this program is $5.150 billion in fiscal year 1992. This estimate assumes that the temporary program would pay benefits for approximately 30 million weeks of unemployment and that the average benefit amount would be $170 per person per week. The estimate was developed using a model that compares projected unemployment rates with the structure of rates that determine the four benefit tiers. The estimate is based on CBO's February 1991 economic assumptions that included a 6.6 percent unemployment rate for fiscal year 1992.

In addition, CBO estimates there would be additional administrative costs of $175 million in fiscal year 1992 to process the additional claims for the Federal Emergency Unemployment Compensation program.

Former Members of the Armed Services. S. 1554 would increase the number of weeks of unemployment benefits that exservicemembers could collect unemployment benefits. This bill would reduce the waiting period from four weeks to one week and would extend the eligibility period from 13 weeks to 26 weeks. This provision would be effective on the date of enactment. CBO estimates the cost of this provision would be $10 million in 1991 and would grow to $125 million in 1996. The costs for fiscal year 1991 reflect one month of increased benefits.

Advisory Council on Unemployment Compensation. Further, S. 1554 would establish an Advisory Council on Unemployment Compensation similar to the Social Security Advisory Council. The Council would be required to meet not later than February 1, 1992 and every fourth year thereafter. The Council's first report would be due January 1, 1993. The function of the Council would include reports to Congress regarding the counter-cyclical effectiveness of the unemployment compensation program, benefit adequacy, trust fund solvency and administrative efficiency of the program. The Council would consist of 11 members. Each member of the Council would be compensated including travel expenses and a per diem. S. 1554 would authorize appropriations for any staff support and technical assistance required by the Council. Based on estimates for the Social Security Council and other Councils, CBO estimates the cost would be $1 million in fiscal years 1992, 1993 and 1996. There would be no costs in fiscal years 1994 and 1995 because the Council would not be meeting.

Discretionary Appropriations. Any discretionary appropriation provided prsuant to this act will be counted against the discretionary spending limits in the Budget Enforcement Act. Section 10 requires that appropriation amounts will only become available if an emergency is declared. Funding for emergencies is not counted against the discretionary spending caps.

6. Pay-as-you-go considerations: Section 10 of the bill states that no provisions of this bill would take effect unless the President designates this bill as an emergency requirement under section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985. Section 10 also provides that if the President makes such a designation, the Congress shall be deemed to have so designated this bill in statute. In either case, direct spending from this bill would not be subject to the pay-as-you-go procedures.

7. Estimated cost to State and local government: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Cory Oltman.

11. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

Mr. BENTSEN. Mr. President, there is no question we have been in a recession. It is a difficult recession, with 7 percent unemployment. As of last June we had 8.7 million people out of work in this country.

Unemployed workers are seeing their regular benefits expire at the rate of 300,000 a month.

We have a specific trust fund set up for extended benefits, and that fund is one that has been paid into by employers who have been trying to take care of their employees to meet this kind of problem. There is almost $8 billion in that fund. After providing unemployment benefits across this Nation within the provisions of this bill, we will still have $3.5 billion left in that fund, and additional money will be going into it.

Mr. President, tell me when I have used 2 minutes of my time, please.

Mr. President, the problem is that unemployment indicators lag. We have

information we may be coming out of a recession, and we certainly hope that is correct. But in the last recession you found that the unemployment figures continued to rise and they did not peak out until 7 months after the recession had technically ended. And that is what is happening today: People are having trouble putting food on the table; seeing that sick children can go to the doctor when they do not have the money to do it; trying to make the mortgage payments on the house; trying to keep their cars from being repossessed.

What we have presently, under current law, is a law that, with 7 percent unemployment, only allows three States to qualify. Under this bill, each State will qualify for some benefits. Seven states will have 20 weeks; those will be States that have 8 percent or more of unemployment.

You will have 10 States, with unemployment between 7 and 8 percent, that would be eligible for 13 weeks of additional emergency benefits.

Unemployed workers in 19 States, in States with unemployment of 6 to 7 percent, would receive 7 weeks of emergency benefits.

Unemployed workers in the remaining 14 States would be eligible for 4 weeks of emergency benefits. And they are all listed on that chart, for the information of the Members of the Senate.

What will it cost to bring this about? We are talking about $5.2 billion.

The PRESIDING OFFICER. Two minutes have expired.

Mr. BENTSEN. Mr. President, tell me when I have used another minute. We have quite a limitation on our time here.

By our estimate that would be about $5.2 billion with 90 percent of the money going to workers in States with unemployment rates of 6 percent or higher. We have some $600 million in additional funds that would be utilized to take care of veterans, including personnel who participated in Desert Storm, coming back.

There is quite a disparity in the way the benefits are paid out between people in the Armed Services who have to wait 4 weeks to begin to receive their benefits, and then receive only half the number of weeks of benefits that a civilian does. So this bill provides parity between the military personnel and, in turn, the civilian population.

Mr. President, this is a carefully crafted piece of legislation, and I particularly want to thank the ranking minority member, Senator PACKWOOD, for his assistance in developing this bill.

The PRESIDING OFFICER. The minute has expired.

Mr. BENTSEN. I also want to thank Senator RIEGLE who has worked diligently to bring about these changes in the UI program. In addition, I want to express my appreciation to Senator SARBANES and Senator SASSER.

Mr. President, I yield 5 minutes to the distinguished ranking minority member, Senator PACKWOOD.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. PACKWOOD. Mr. President, I thank the Chair and thank the distinguished leader of the committee. There are, I guess in this country, emergencies and emergencies. Perhaps we should say worldwide emergencies, and emergencies. And I know the argument that is made against the bill of the Senator from Texas, which I proudly cosponsored, and that is, one, it is not paid for.

Well, the taxes have been collected. They were collected in the past. It is not unlike the highway fund, the trust fund. They are in a trust fund to be spent for emergencies, and now an emergency has arrived.

The second argument that is used is that it really is not an emergency. This is a relatively small expenditure. We have a budget of roughly a $1.5 trillion, and this is perhaps a $5 billion expenditure. All things considered, it is so minuscule as to not be an emergency.

That is easy enough to say if you are an economist at Harvard and are talking in the macro sense. But if you are talking in the micro sense, if you are an unemployed worker in a lumber mill in Rosenburg, OR, 42 years of age, you have been earning, if you are lucky and working all year long, $23,000 a year. Your spouse may work at the Woolworth and make another $10,000 or $11,000, and you are out of work. You are out of work through no fault of your own. You are willing to work; as a matter of fact, your employer wants you to work. As a matter of fact, the economy for lumber is good. But for a variety of reasons involving no fault of yours—mainly environmental actions—you are laid off. And, for you, that is an emergency.

You only have one car between you and you owe payments on it. You own a house that is perhaps worth no more than $60,000, or $80,000 at the most, and you owe payments on it.

And in Roseburg, OR, there are no other jobs. It is easy enough to say fine, go to work in the electronics industry. There is no electronics industry in Rosenburg.

Go to work in construction? Construct what? This is a lumber town.

Go to work in—and then add dot, dot, dot. There is no job in Rosenburg. And if you could get one, instead of paying $10 or $12 an hour it is going to pay $5.75 or $6 an hour.

So if you are Jim or Sally, in this job at the mill, this is an emergency for which taxes have been collected to pay for it, and are being held in a trust fund to be released for this emergency.

So I very much support the bill of the Senator from Texas, and I hope that this Senate will adopt it overwhelmingly to take care of the people in this country who face a genuine emergency.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BENTSEN. I yield 2 minutes to the distinguished Senator from Michigan.

Mr. RIEGLE. Mr. President, I thank the Senator from Texas, and I thank him for his leadership on this issue.

As all of us have observed for the last several months, the Bush administration has an economic program throughout the world, instead of in this country. We have been helping nations across the world with emergency help. There is a long list, but I will not read it off tonight.

Tonight we are stepping up to help American people by providing emergency unemployment benefits for people who have been unemployed for so long that they have exhausted their benefits. In many cases, they are losing their homes, their cars, and even losing their families.

In the State of Michigan, because the program is not operating properly, we just had 48,000 workers who had just started to receive extended unemployment benefits, and the program triggered off. They have not received a cent since that time. As has been noted already, there is $8 billion sitting in the trust fund collected for precisely this purpose.

This legislation will allow that money to begin to help our people, and it is time we helped the people of this country. They deserve our help. The money is in the trust fund, and I hope that the President, when he gets this legislation, will see the emergency here at home the same way the administration has been so able to see all of the emergencies around the world for which we have been sending money, because we will need his help to actually have this legislation become effective so this money can start to go out to our unemployed workers.

But our people need this help, and it is time to help our own country. I ask the Senate to support this. It is critically needed.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BENTSEN. I yield to the distinguished Senator from Maryland 2 minutes.

Mr. SARBANES. Mr. President, I thank the distinguished chairman of the committee, and I want to thank him and commend him for this extraordinary work he has done on this important issue.

Mr. President, there is a crisis, as Senator PACKWOOD said, for the individual worker and his family who have to worry about meeting the house payments and the car payments. These are working people who have lost their

jobs. You do not get unemployment insurance unless you have been working for a certain period of time. These are people who have been working, good hard-working Americans.

There is a trust fund, Mr. President, that builds up that people have referred to. This is the extended benefit trust fund balance. In 1990, last October 1, it had a $7.2 billion surplus—surplus—in the trust fund. This year, the trust fund is building up an even larger surplus. The employers pay these taxes into the trust to pay unemployment benefits in a recession. We have this bizarre situation right now that a trust fund to pay unemployment benefits is building up a surplus in a recession when our workers cannot get unemployment benefits. Only three States are now paying extended benefits.

Darman and Boskin say the economy has turned the corner; it is on the way up. We do not know if that is the case or not. In any event, what this chart shows is that even after you reach the turning point of the recession, the number of long-term unemployed continues to go up, continues to rise.

What we have is workers who have drawn benefits for 26 weeks. They have exhausted their benefits. They cannot find a job in this job market with an unemployment rate now of 7 percent, much worse than when they lost their jobs 26 weeks ago. They are now trying to find jobs in a job market that is worse than at the time they lost their jobs.

We need to help these people. We have an emergency here at home.

I urge the passage of this legislation.

Mr. BENTSEN. Mr. President, in consultation with the majority leader, he wants to yield 2 minutes to the distinguished Senator from Pennsylvania off his time.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. WOFFORD. Mr. President, we should look at these graphs, these charts, and these statistics. But I come from having run the unemployment insurance system in Pennsylvania for the last 4½ years, and I have seen firsthand the growing number of families who have run out of their unemployment compensation and face an emergency in which there are no additional weeks of unemployment compensation. I have seen what it does to those families.

If we want to know what undermines confidence in government, it is for a government to have a trust fund with the funds available, paid for by the employers and by the workers, ready and not used. From my first days in this body I have been urging action to deal with this emergency.

Thousands of returned Peace Corps volunteers are here in Washington celebrating the 30th aniversary of the Peace Corps, beginning in the Capitol this very night. They took a spirit of urgency abroad to get action on the pressing humam problems facing people in other countries. We have such a problem right here at home. It's an emergency for millions of Americans. We need action and we need action now. I urge the support of this bill.

Mr. BENTSEN. Mr. President, I yield 2 minutes to the distinguished Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 2 minutes.

Mr. KENNEDY. Mr. President, the White House was wrong 1 year ago when it said the recession was not coming, and the White House was wrong 6 months ago when it said it was going to be short and shallow. And the White House is wrong tonight when it said that hard-working, decent Americans do not need help. They do need help. They need our help.

That attitude is unacceptable. This recession is not their fault, and they should not have to pay the price for it. The message we are sending tonight is help at last is on its way.

I yield the floor.

Mr. BENTSEN. Mr. President, I yield 2 minutes to the distinguished Senator from Tennessee [Mr. SASSER].

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. SASSER. Mr. President, this is a major victory for the American people. This is a major victory for those who want to work but cannot find jobs. I want to congratulate the distinguished chairman of the Finance Committee for acting decisively at a crucial time to deal with what is, indeed, an economic emergency for some 3 million Americans and their families.

Further, Mr. President, I want to urge the President of the United States to agree that this is, indeed, an emergency, an emergency for over 3 million Americans and their families, and to give this legislation, when it reaches his desk, an emergency designation.

Far from being a violation of the budget summit agreement, as some have urged, as a participant in those negotiations, as one who shepherded that budget agreement through this body, I want to say that this is something that was contemplated under the budget agreement. And whether or not the President exercises the emergency power that the Congress is giving him I think will represent a critical test of whether or not this budget agreement is flexible enough to survive, is flexible enough to meet the needs of the American people.

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

Mr. BENTSEN. Mr. President, I retain the remainder of my time.

I yield 2 minutes to the distinguished Senator from Illinois.

The PRESIDING OFFICER. (Mr. SARBANES). The Senator from Illinois is recognized for 2 minutes.

Mr. SIMON. Mr. President, first of all, I want to commend Senator BENTSEN for his leadership; the Presiding Officer right now, Senator SARBANES, Senator RIEGLE, and others. There is a need, and it is embarrassing that only one-third of unemployed workers are receiving benefits.

One aspect of it I do differ with, and I expressed this about 10 days ago in the Democratic caucus. I think we would be better off doing it on a pay-as-you-go basis, facing up to the fact there is a need, but also facing up to the fact that if we do it without adding some increased revenue, we do add to the deficit, though this fund was established specifically for this purpose.

But the need is here. We cannot turn a cold shoulder to American workers. And while this particular mechanism is not the one I prefer, I think it is absolutely essential that we go ahead. I strongly support the measure that is before us.

Mr. MITCHELL. Mr. President, I yield 1 minute of my leader time to the distinguished Senator from Connecticut.

Mr. DODD. Mr. President, I thank the majority leader. I join in the commendation of the distinguished chairman of the Finance Committee.

Mr. President, to bring this home in very concrete terms, in a State like Connecticut, my home State, as of this month 54,000 individuals have now exhausted their unemployment compensation benefits. By the end of this fiscal year 3 million Americans out of the same 8 million unemployed will have exhausted their benefits, and by the beginning of 1992, 3.8 million people will have exhausted those benefits.

Mr. President, we have watched an administration that has expressed a great deal of concern and care about other parts of the world. Many of those actions I applaud—emergency relief for Bangladesh, emergency relief for the Kurds. The President was right in both of those cases, in my view. He tried to do something in technical assistance for the Soviet Union. I understand that.

But I think the President also needs to understand, Mr. President, that we need emergency relief for an awful lot of people in this country, who have never been out of work before, who find themselves tonight for the first time collecting pink slips with obligations on home mortgages, college education, automobiles, basic necessities to meet.

So, Mr. President, I applaud those who have orchestrated this particular movement. This is truly a victory for people who need some assistance. We are saying that we not only care about the rest of the world, but we care about people here at home. We are caught in the vise of unemployment.

Mr. President, I yield the floor.

Mr. MITCHELL. Mr. President, I yield 1 minute of my leader time to the Senator from Michigan.

Mr. LEVIN. I thank my friend.

Mr. President, the unemployment rate in Michigan is 9.1 percent, 400,000 people unemployed, 40,000 people rudely, arbitrarily cut-off from extended benefits in June.

We have a fund. The fund is there for a rainy day. There is more than enough money in that fund to pay for these benefits. It is pouring in Michigan; it is more than a rainy day. We need this money for unemployed people. I commend the Senator from Texas and the others who have put together this package. It is critically needed.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER (Mr. SIMON). The majority leader is recognized.

Mr. MITCHELL. Mr. President, I yield myself such leader time as I may use.

Mr. President, Members of the Senate, in May, Democrats announced an economic recovery and growth package. We promised legislation to implement that plan. This is such legislation.

If unemployment compensation is to work as intended, as an automatic stabilizer to the economy, then unemployment benefits must be provided to those in need and eligible. A week ago today the Senate Finance Committee, in a bipartisan vote of 16 to 4, approved an emergency unemployment compensation extension bill. The issue is simple. It is clear. Nearly 9 million Americans are out of work. These are people who have lost their jobs through no fault of their own. Nearly 3 million Americans exhausted State unemployment compensation benefits between July of last year, when the recession began, and this July. The national average unemployment rate is 7 percent, the highest in 5 years.

The recession began last July. Contrary to the President's prediction, it has not been short and it has not been shallow. For workers who have lost their livelihoods, it is already too deep. For businesses strapped for credit and customers, it has already been too long.

Eighteen States have unemployment levels at 7 percent or above. Another 18 States have unemployment levels at 6 percent or above. And these numbers do not include those Americans working part time because they cannot find full-time jobs or those who have become so frustrated they have dropped out of the labor force.

Most State unemployment programs offer 26 weeks of benefits as partial wage replacement. During tough economic times, when jobs are harder to find, States trigger onto what is known as the Extended Benefits Program. This program is designed to offer Americans an additional 13 weeks of benefits once their initial 26 weeks have expired.

One would think that with nearly 9 million Americans out of work and over two-thirds of the States with unemployment rates above 6 percent, many, if not all, of the States would trigger onto the Extended Benefits Program. But that is not the case. Despite the severity of unemployment throughout the country, only eight States have triggered onto the Extended Benefits Program, and five of those eight have already triggered off the program; they are no longer eligible for the extra 13 weeks of benefits. My own State of Maine, with an unemployment rate of 7.6 percent, is likely to trigger off the Extended Benefits Program this month unless action is taken. And that is the case even though some areas of Maine have unemployment levels above 11 percent. Despite that, Maine will not be eligible any longer for extended benefits. That is not right. It is not fair. This legislation will do something about it.

Americans go to work knowing that if they lose their jobs through no fault of their own and have worked long enough to qualify for unemployment benefits, they will receive those benefits. Employers know that they pay unemployment taxes so, in the event of a recession, those taxes will be used to pay unemployment benefits to their workers. But during this recession large numbers of unemployed families are not receiving benefits, and of those who have received benefits many have exhausted them. Meanwhile, the extended benefits trust fund is growing. The trust fund surplus is now about $8 billion. It is expected to grow to $9.5 billion during the next fiscal year.

Mr. President and Members of the Senate, how can we have a situation where millions of Americans are unemployed and yet a trust fund established to provide unemployment benefits to the unemployed is growing and benefits are not being paid? It is not right. It is not fair. The taxes are collected to pay the unemployment benefits to those who are out of work. They ought to receive unemployment compensation.

The President hopes the recession will end soon and unemployment will decline. We all do. Yet the President's own chairman of the Council of Economic Advisers has said that unemployment will remain high for the next 2 years. Working men and women and their families who depend on their paychecks cannot pay their mortgages with Presidential hopes. They cannot put food on the table with kind words. We can hope no longer. We can talk no longer. The time to act is now.

It is time that the unemployment compensation be corrected to work as intended. This bill deserves our unanimous support.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The minority leader is recognized.

AMENDMENT NO. 1018

(Purpose: To provide a substitute amendment)

Mr. DOLE. Mr. President, under the agreement, I send an amendment in the nature of a substitute to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for himself, Mr. SIMPSON and Mr. DOMENICI, proposes an amendment numbered 1018.

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

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

The amendment is as follows:

In lieu of the language proposed to be inserted insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Unemployment Compensation Act of 1991".

SEC. 2. FEDERAL-STATE AGREEMENTS.

(a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this Act with the Secretary of Labor (hereafter in this Act referred to as the "Secretary"). Any State which is a party to an agreement under this Act may, upon providing 30 days written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF AGREEMENT.—Any agreement under subsection (a) shall provide that the State agency of the State will make payments of emergency unemployment compensation—

(1) to individuals who—

(A) have exhausted all rights to regular compensation under the State law;

(B) have no rights to compensation (including both regular compensation and extended compensation) with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law (and are not paid or entitled to be paid any additional compensation under any State or Federal law); and

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(2) for any week of unemployment which begins in the individual's period of eligibility (as defined in section 7(2)).

(c) EXHAUSTION OF BENEFITS.—For purposes of subsection (b)(1)(A), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

(2) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(d) WEEKLY BENEFIT AMOUNT.—For purposes of any agreement under this Act—

(1) the amount of emergency unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependent's allowances) payable to such individual during such individual's benefit year under the State law for a week of total unemployment;

(2) the terms and conditions of the State law which apply to claims for extended compensation and to the payment thereof shall apply to claims for emergency unemployment compensation and the payment thereof, except where inconsistent with the provisions of this Act, or with the regulations or operating instructions of the Secretary promulgated to carry out this Act; and

(3) the maximum amount of emergency unemployment compensation payable to any individual for whom an account is established under section 3 shall not exceed the amount established in such account for such individual.

**SEC. 3. EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT.**

(a) IN GENERAL.—Any agreement under this Act shall provide that the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment compensation account with respect to such individual's benefit year.

(b) AMOUNT IN ACCOUNT.—

(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

(A) 100 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which the individual most recently received regular compensation, or

(B) the applicable limit times the individual's average weekly benefit amount for the benefit year.

(2) APPLICABLE LIMIT.—For purposes of this section—

(A) IN GENERAL.—Except as provided in this paragraph, the applicable limit shall be determined under the following table:

| In the case of weeks beginning during a: | The applicable limit is: |
|---|---|
| 6-percent period ..... | 10 |
| Other period ..... | 5. |

(B) APPLICABLE LIMIT NOT REDUCED.—An individual's applicable limit for any week shall in no event be less than the highest applicable limit in effect for any prior week for which emergency unemployment compensation was payable to the individual from the account involved.

(C) INCREASE IN APPLICABLE LIMIT.—If the applicable limit in effect for any week is higher than the applicable limit for any prior week, the applicable limit shall be the higher applicable limit, reduced (but not below zero) by the number of prior weeks for which emergency unemployment compensation was paid to the individual from the account involved.

(3) REDUCTION FOR EXTENDED BENEFITS.—The amount in an account under paragraph (1) shall be reduced (but not below zero) by the aggregate amount of extended compensation (if any) received by such individual relating to the same benefit year under the Federal-State Extended Unemployment Compensation Act of 1970.

(4) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

(c) DETERMINATION OF PERIODS.—

(1) IN GENERAL.—For purposes of this section, the terms "6-percent period" and "other period" mean, with respect to any State, the period which—

(A) begins with the third week after the first week for which the applicable trigger is on, and

(B) ends with the third week after the first week for which the applicable trigger is off.

(2) APPLICABLE TRIGGER.—In the case of a 6-percent period or other period, as the case may be, the applicable trigger is on for any week with respect to any such period if the adjusted rate of insured unemployment in the State for the period consisting of such week and the immediately preceding 12 weeks falls within the applicable range.

(3) APPLICABLE RANGE.—For purposes of this subsection, the applicable range is as follows:

| In the case of a: | The applicable range is: |
|---|---|
| 6-percent period ..... | A rate equal to or exceeding 6 percent. |
| Other period ..... | A rate less than 6 percent. |

(4) SPECIAL RULES FOR DETERMINING PERIODS.—

(A) MINIMUM PERIOD.—Except as provided in subparagraph (B), if for any week beginning after August 31, 1991, a 6-percent period or other period, as the case may be, is triggered on with respect to such State, such period shall last for not less than 13 weeks.

(B) EXCEPTION IF APPLICABLE RANGE INCREASES.—If, but for subparagraph (A), another period with a higher applicable range would be in effect for a State, such other period shall be in effect without regard to subparagraph (A).

(5) NOTIFICATION BY SECRETARY.—When a determination has been made that a 6-percent period or other period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no emergency unemployment compensation shall be payable to any individual under this Act for any week—

(A) beginning before the later of—

(i) September 1, 1991, or

(ii) the first week following the week in which an agreement under this Act is entered into, or

(B) beginning after May 31, 1992.

(2) TRANSITION.—In the case of an individual who is receiving emergency unemployment compensation for a week which includes May 31, 1992, such compensation shall continue to be payable to such individual in accordance with subsection (b) for any week beginning in a period of consecutive weeks for each of which the individual meets the eligibility requirements of this Act.

(3) REACHBACK PROVISIONS.—(A) IN GENERAL.—If—

(i) any individual exhausted such individual's rights to regular compensation (or extended compensation) under the State law after March 31, 1991, and before the first week following August 31, 1991 (or, if later, the week following the week in which the agreement under this Act is entered into), and

(ii) a 6-percent period, as described in subsection (c), is in effect with respect to the State for the first week following August 31, 1991,

such individual shall be entitled to emergency unemployment compensation under this Act in the same manner as if such individual's benefit year ended no earlier than the last day of such following week.

(B) LIMITATION OF BENEFITS.—In the case of an individual who has exhausted such individual's rights to both regular and extended compensation, any emergency unemployment compensation payable under subparagraph (A) shall be reduced in accordance with subsection (b)(3).

**SEC. 4. PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF EMERGENCY UNEMPLOYMENT COMPENSATION.**

(a) GENERAL RULE.—There shall be paid to each State which has entered into an agreement under this Act an amount equal to 100 percent of the emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

(b) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this Act or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this Act in respect of such compensation.

(c) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this Act shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this Act for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

**SEC. 5. FINANCING PROVISIONS.**

(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this Act.

(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this Act. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as established by section 905 of the Social Security Act) to the account of such State in the Unemployment Trust Fund.

(c) ASSISTANCE TO STATES.—There are hereby authorized to be appropriated without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act) in meeting the costs of administration of agreements under this Act.

**SEC. 6. FRAUD AND OVERPAYMENTS.**

(a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of emergency unemployment compensation under this Act to which he was not entitled, such individual—

(1) shall be ineligible for further emergency unemployment compensation under this Act in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

(b) REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment compensation under this Act to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(1) the payment of such emergency unemployment compensation was without fault on the part of any such individual, and

(2) such repayment would be contrary to equity and good conscience.

(c) RECOVERY BY STATE AGENCY.—

(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any emergency unemployment compensation payable to such individual under this Act or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the emergency unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

**SEC. 7. DEFINITIONS.**

For purposes of this Act:

(1) IN GENERAL.—The terms "compensation", "regular compensation", "extended compensation", "additional compensation", "benefit year", "base period", "State", "State agency", "State law", and "week" have the meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

(2) ELIGIBILITY PERIOD.—An individual's eligibility period shall consist of the weeks in the individual's benefit year which begin in a 6-percent period or other period under this Act and, if the individual's benefit year ends within any such period, any weeks thereafter which begin in any such period. In no event shall an individual's period of eligibility include any weeks after the 26th week after the end of the benefit year for which the individual exhausted his rights to regular compensation or extended compensation.

(3) ADJUSTED RATE OF INSURED UNEMPLOYMENT.—The adjusted rate of insured unemployment shall be determined in the same manner as the rate of insured unemployment is determined under section 203 of the Federal-State Extended Unemployment Compensation Act of 1970, except that the total number of individuals exhausting rights to regular compensation for the most recent three months for which data are available shall be included in such determination in the same manner as the average weekly number of individuals filing claims for regular compensation.

**SEC. 8. PAYMENTS OF UNEMPLOYMENT COMPENSATION TO FORMER MEMBERS OF THE ARMED FORCES.**

(a) REDUCTION IN LENGTH OF REQUIRED ACTIVE DUTY FOR DESERT STORM RESERVISTS.—Section 8521 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) In the case of a member of the armed forces who served on active duty in the Persian Gulf area of operations in connection with Operation Desert Storm, paragraph (1) of subsection (a) shall be applied by substituting '90 days' for '180 days'.

"(2) For purposes of paragraph (1), the term 'Operation Desert Storm' has the meaning given the term in section 3(1) of Public Law 102-25 (105 Stat. 77).".

(b) LIMITATIONS ON UNEMPLOYMENT COMPENSATION.—Subsection (a)(1) of section 8521 of title 5, United States Code, is amended by striking subparagraphs (A) and (B) and inserting the following new subparagraphs:

"(A) The individual was—

"(i) involuntarily separated from the armed forces, or

"(ii) separated from the armed forces after being retained on active duty pursuant to section 673C or 676 of title 10, United States Code.

"(B) This paragraph does not apply in the case of a dismissal, dishonorable discharge, or bad conduct discharge adjudged by a court-martial or a discharge under other than honorable conditions (as defined in regulations prescribed by the Secretary of the military department concerned).".

(c) CONFORMING AMENDMENT.—Subsection (c) of section 8521 of such title is hereby repealed.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to weeks of unemployment beginning on or after August 31, 1991.

## TITLE II—PERMANENT EXTENSION OF PROVISIONS RELATING TO COLLECTION OF NONTAX DEBTS OWED TO FEDERAL AGENCIES

Sec. 201 (a) General Rule—Subsection (c) of section 2653 of the Deficit Reduction Act of 1984 is amended by striking "on or before January 10, 1994".

(b) The amendments made by this subsection shall take effect on October 1, 1991.

## TITLE III—GUARANTEED STUDENT LOANS

### CREDIT CHECKS; COSIGNERS

Sec. 301. (a) Section 427(a)(2)(A) of the Higher Education Act (hereafter referred to as the "Act") is amended to read as follows:

"(A) is made without security and without endorsement, except that prior to making a loan insurable by the Secretary under this part a lender shall—

"(i) obtain a credit report, from at least one national credit bureau organization, with respect to a loan applicant who will be at least 21 years of age as of July 1 of the award year for which assistance is being sought, for which the lender may charge the applicant an amount not to exceed the lesser of $25 or the actual cost of obtaining the credit report; and

"(ii) require an applicant of the age specified in clause (i) who, in the judgment of the lender in accordance with the regulations of the Secretary, has an adverse credit history, to obtain a credit worthy cosigner in order to obtain the loan, provided that, for purposes of this clause, an insufficient or nonexistent credit history may not be considered to be an adverse credit history;".

(b) Section 428(b)(1) of the Act is further amended—

(1) in subparagraph (V) (as amended by section 433), by striking out "and" at the end thereof:

(2) in subparagraph (W) (as amended by section 433), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new subparagraph:

"(X) provides that prior to making a loan made, insured, or guaranteed under this part (other than a loan made in accordance with section 428C), a lender shall—

"(i) obtain a credit report, from at least one national credit bureau organization, with respect to a loan applicant who will be at least 21 years of age as of July 1 of the award year for which assistance is being sought, for which the lender may charge the applicant an amount not to exceed the lesser of $25 or the actual cost of obtaining the credit report; and

"(ii) require an applicant of the age specified in clause (i) who, in the judgment of the lender in accordance with the regulations of the Secretary, has an adverse credit history, to obtain a credit worthy cosigner in order to obtain the loan, provided that, for purposes of this clause, an insufficient or nonexistent credit history may not be considered to be an adverse credit history.".

SEC. 302. (a) Section 427 of the Act is amended by adding at the end thereof the following new section:

"(d) BORROWER INFORMATION.—The lender shall obtain the borrower's driver's license number, if any, at the time of application for the loan.".

(b) Section 428 of the Act is further amended—

(1) in subsection (a)(2)(A)—

(A) in clause (i)(I), by striking out "and" at the end thereof;

(B) in clause (ii), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(C) by adding at the end thereof the following new clause:

"(iii) have provided to the lender at the time of application for a loan made, insured, or guaranteed under this part, the student's driver's number, if any."

### BORROWER INFORMATION

SEC. 303. Section 485(b) of the Act is amended—

"(1) by amending the subsection heading to read as follows: "EXIT COUNSELING FOR BORROWERS; BORROWER INFORMATION.—"; and

(2) by adding at the end thereof the following: "Each eligible institution shall require that the borrower of a loan made under part B, part D, or part E submit to the institution, during the exit interview required by this subsection, the borrower's expected permanent address after leaving the institution, regardless of the reason for leaving; the name and address of the borrower's expected employer after leaving the institution; and the address of the borrower's next of kin. In the case of a loan made under part B, the institution shall then submit this information to the holder of the loan.".

SEC. 304. Section 428 of the Act is further amended by adding at the end thereof the following new subparagraph:

"(W) provides that the lender shall obtain, as part of the note or written agreement evidencing the loan, the borrower's authorization for entry of judgment against the borrower in the event of default.".

WAGE GARNISHMENT

SEC. 305. (a) Part G of title IV of the Act is further amended by inserting immediately following section 488 the following new section:

"WAGE GARNISHMENT REQUIREMENT

"SEC. 488A. (a) GARNISHMENT REQUIREMENTS.—Notwithstanding any provision of State law, a guaranty agency, or the Secretary in the case of loans made, insured or guaranteed under this title that are held by the Secretary, may garnish the disposable pay of an individual to collect the amount owed by the individual, if he or she is not currently making required repayment under a repayment agreement with the Secretary, or, in the case of a loan guaranteed under part B on which the guaranty agency received reimbursement from the Secretary under section 428(c), with the guaranty agency holding the loan, as appropriate, provided that—

"(1) the amount deducted for any pay period may not exceed 10 percent of disposable pay, except that a greater percentage may be deducted with the written consent of the individual involved;

"(2) the individual shall be provided written notice, sent by mail to the individual's last known address, a minimum of 30 days prior to the initiation of proceedings, from the guaranty agency or the Secretary, as appropriate, informing such individual of the nature and amount of the loan obligation to be collected, the intention of the guaranty agency or the Secretary, as appropriate, to initiate proceedings to collect the debt through deductions from pay, and an explanation of the rights of the individual under this section;

"(3) the individual shall be provided an opportunity to inspect and copy records relating to the debt;

"(4) the individual shall be provided an opportunity to enter into a written agreement with the guaranty agency or the Secretary, under terms agreeable to the Secretary, or the head of the guaranty agency or his designee, as appropriate, to establish a schedule for the repayment of the debt;

"(5) the individual shall be provided an opportunity for a hearing in accordance with subsection (b) on the determination of the Secretary or the guaranty agency, as appropriate, concerning the existence or the amount of the debt, and, in the case of an individual whose repayment schedule is established other than by a written agreement pursuant to paragraph (4), concerning the terms of the repayment schedule;

"(6) the employer shall pay to the Secretary or the guaranty agency as directed in the withholding order issued in this action, and shall be liable for, and the Secretary or the guaranty agency, as appropriate, may sue the employer in a State or Federal court of competent jurisdiction to recover, any amount that such employer fails to withhold from wages due an employee following receipt of such employer of notice of the withholding order, plus attorneys' fees, costs, and, in the court's discretion, punitive damages, but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph; and

"(7) an employer may not discharge from employment, refuse to employ, or take disciplinary action against an individual subject to wage withholding in accordance with this section by reason of the fact that the individual's wages have been subject to garnishment under this section, and such individual may sue in a State or Federal court of competent jurisdiction any employer who takes such action. The court shall award attorneys' fees to a prevailing employee and, in its discretion, may order reinstatement of the individual, award punitive damages and back pay to the employee, or order such other remedy as may be reasonably necessary.

"(b) HEARING REQUIREMENTS.—A hearing decribed in subsection (a)(5) shall be provided prior to issuance of a garnishment order if the individual, on or before the 15th day following the mailing of the notice described in subsection (a)(2), and in accordance with such procedures as the Secretary or the head of the guaranty agency, as appropriate, may prescribe, files a petition requesting such a hearing. If the individual does not file a petition requesting a hearing prior to such date, the Secretary or the guaranty agency, as appropriate, shall provide the individual a hearing under subsection (a)(5) upon request, but such hearing need not be provided prior to issuance of a garnishment order. A hearing under subsection (a)(5) may not be conducted by an individual under the supervision or control of the head of the guaranty agency, except that nothing in this sentence shall be construed to prohibit the appointment of an administrative law judge. The hearing official shall issue a final decision at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing.

"(c) NOTICE REQUIREMENTS.—The notice to the employer of the withholding order shall contain only such information as may be necessary for the employer to comply with the withholding order.

"(d) DEFINITION.—For the purpose of this section, the term 'disposable pay' means that part of the compensation of any individual remaining after the deduction of any amounts required by law to be withheld.".

(b) Section 428E of the Act is repealed.

(c) Section 428(c)(6) of the act is amended by striking out subparagraph (D).

DATA MATCHING

SEC. 306. Part G of title IV of the Act is further amended by inserting immediately following section 489 the following new section:

"DATA MATCHING

"SEC. 489A. (a)(1) The Secretary is authorized to obtain information from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States, or of any State, concerning the most recent address of an individual obligated on a loan held by the Secretary or a loan made in accordance with part B of this title held by a guaranty agency, or an individual owing a refund of an overpayment of a grant awarded under this title, and the name and address of such individual's employer, if the Secretary determines that such information is needed to enforce the loan or collect the overpayment.

"(2) The Secretary is authorized to provide the information described in paragraph (1) to a guaranty agency holding a loan made under part B of this title on which such individual is obligated.

"(b)(1) Notwithstanding any other provision of law, whenever the head of any department, agency, or instrumentality of the United States or of a State receives a request from the Secretary for information authorized under this section, such individual or his designee shall promptly cause a search to be made of the records of the agency to determine whether the information requested is contained in those records.

"(2)(A) If such information is found, the individual shall, is conformance with the provisions of the Privacy Act of 1974, as amended, immediately transmit such information to the Secretary, except that if disclosure of the information would contravene national policy or security interests of the United States, or the confidentiality of census data, the individual shall immediately so notify the Secretary and shall not transmit the information.

"(B) If no such information is found, the individual shall immediately so notify the Secretary.

"(3)(A) The reasonable costs incurred by any such agency of the United States or of a State in providing any such information to the Secretary shall be reimbursed by the Secretary, and retained by the agency.

"(B) Whenever such information is furnished to a guaranty agency, that agency shall be charged a fee to be used to reimburse the Secretary for the expense of providing such information.

"(c) The Secretary of Labor shall enter into an agreement with the Secretary to provide prompt access for the Secretary, in accordance with this section, to the wage and unemployment compensation claims information and data maintained by or for the Department of Labor or State employment security agencies.".

## TITLE IV—ELECTROMAGNETIC SPECTRUM FUNCTION

**SECTION 401. SHORT TITLE.**

This Act may be cited as the "Emerging Telecommunications Technologies Act of 1991".

**SEC. 402. FINDINGS.**

The Congress finds that—

(1) spectrum is a valuable natural resource;

(2) it is in the national interest that this resource be used more efficiently;

(3) the spectrum below 6 gigahertz (GHz) is becoming increasingly congested, and, as a result entities that develop innovative new spectrum-based services are finding it difficult to bring these services to the marketplace;

(4) scarcity of assignable frequencies can and will—

(A) impede the development and commercialization of new spectrum-based products and services;

(B) reduce the capacity and efficiency of the United States telecommunications system; and

(C) adversely affect the productive capacity and international competitiveness of the United States economy;

(5) the United States Government presently lacks explicit authority to use excess radiocommunications capacity to satisfy non-United States Government requirements;

(6) more efficient use of the spectrum can provide the resources for increased economic returns;

(7) many commercial users derive significant economic benefits from their spectrum licenses, both through the income they earn from their use of the spectrum and the returns they realize upon transfer of their licenses to third parties; but under current procedures, the United States public does not sufficiently share in their benefits;

(8) many United States Government functions and responsibilities depend heavily on

the use of the radio spectrum, involve unique applications, and are performed in the broad national and public interest;

(9) competitive bidding for spectrum can yield significant benefits for the United States economy by increasing the efficiency of spectrum allocations, assignment, and use; and for United States taxpayers by producing substantial revenues for the United States Treasury; and

(10) the Secretary, the President, and the Commission should be directed to take appropriate steps to foster the more efficient use of this valuable national resource, including the reallocation of a target amount of 200 megahertz (MHz) of spectrum from United States Government use under section 305 of the Communications Act (47 U.S.C. 305) to non-United States Government use pursuant to other provisions of the Communications Act and the implementation of competitive bidding procedures by the Commission for some new assignments of the spectrum.

**SEC. 403. NATIONAL SPECTRUM PLANNING.**

(a) PLANNING ACTIVITIES.—The Secretary and the Chairman of the Commission shall, at least twice each year, conduct joint spectrum planning meetings with respect to the following issues—

(1) future spectrum needs;

(2) the spectrum allocation actions necessary to accommodate those needs, including consideration of innovation and marketplace developments that may affect the relative efficiencies of different portions of the spectrum; and

(3) actions necessary to promote the efficient use of the spectrum, including proven spectrum management techniques to promote increased shared use of the spectrum as a means of increasing non-United States Government access; and innovation in spectrum utilization including means of providing incentives for spectrum users to develop innovative services and technologies.

(b) REPORTS.—The Secretary and the Chairman of the Commission shall submit a joint annual report to the President on the joint spectrum planning meetings conducted under subsection (a) and any recommendations for action developed in such meetings.

(c) OPEN PROCESS.—The Secretary and the Commission will conduct an open process under this section to ensure the full consideration and exchange of views among any interested entities, including all private, public, commercial, and governmental interests.

**SEC. 404. IDENTIFICATION OF REALLOCABLE FREQUENCIES.**

(a) IDENTIFICATION REQUIRED.—The Secretary shall prepare and submit to the President the reports required by subsection (d) to identify bands of frequencies that—

(1) are allocated on a primary basis for United States Government use and eligible for licensing pursuant to section 305(a) of the Communications Act (47 U.S.C. 305(a));

(2) are not required for the present or identifiable future needs of the United States Government;

(3) can feasibly be made available during the next 15 years after enactment of this Act for use under the provisions of the Communications Act for non-United States Government users;

(4) will not result in costs to the Federal Government that are excessive in relation to the benefits that may be obtained from the potential non-United States Government uses; and

(5) are likely to have significant value for non-United States Government uses under the Communications Act.

(b) AMOUNT OF SPECTRUM RECOMMENDED.—

(1) IN GENERAL.—The Secretary shall recommend as a goal for reallocation, for use by non-United States Government stations, bands of frequencies constituting a target amount of 200 MHz, that are located below 6 GHz, and that meet the criteria specified in paragraphs (1) through (5) of subsection (a). If the Secretary identifies (as meeting such criteria) bands of frequencies totalling more than 200 MHz, the Secretary shall identify and recommend for reallocation those bands (totalling not less than 200 MHz) that are likely to have the greatest potential for non-United States Government uses under the Communications Act.

(2) MIXED USES PERMITTED TO BE COUNTED.—Bands of frequencies which the Secretary recommends be partially retained for use by United States Government stations, but which are also recommended to be reallocated and made available under the Communications Act for use by non-United States Government stations, may be counted toward the target 200 MHz of spectrum required by paragraph (1) of this subsection, except that—

(A) the bands of frequencies counted under this paragraph may not count toward more than one-half of the amount targeted by paragraph (1) of this subsection;

(B) a band of frequencies may not be counted under this paragraph unless the assignments of the band to United States Government stations under section 305 of the Communications Act (47 U.S.C. 305) are limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by which United States Government stations is substantially less (as measured by geographic area, time, or otherwise) than the potential United States Government use to be made; and

(C) the operational sharing permitted under this paragraph shall be subject to procedures which the Commission and the Department of Commerce shall establish and implement to ensure against harmful interference.

(c) CRITERIA FOR IDENTIFICATION.—

(1) NEEDS OF THE UNITED STATES GOVERNMENT.—In determining whether a band of frequencies meets the criteria specified in subsection (a)(2), the Secretary shall—

(A) consider whether the band of frequencies is used to provide a communications service that is or could be available from a commercial provider;

(B) seek to promote—

(i) the maximum practicable reliance on commercially available substitutes;

(ii) the sharing of frequencies (as permitted under subsection (b)(2));

(iii) the development and use of new communications technologies; and

(iv) the use of nonradiating communications systems where practicable; and

(C) seek to avoid—

(i) serious degradation of United States Government services and operations;

(ii) excessive costs to the United States Government and civilian users of such Government services; and

(iii) identification of any bands for reallocation that are likely to be subject to substitution for the reasons specified in section 5(b)(2)(A) through (C).

(2) FEASIBILITY OF USE.—In determining whether a frequency band meets the criteria specified in subsection (a)(3), the Secretary shall—

(A) assume such frequencies will be assigned by the Commission under section 303 of the Communications Act (47 U.S.C. 303) over the course of fifteen years after the enactment of this Act;

(B) assume reasonable rates of scientific progress and growth of demand for telecommunications services;

(C) determine the extent to which the reallocation or reassignment will relieve actual or potential scarcity of frequencies available for non-United States Government use;

(D) seek to include frequencies which can be used to stimulate the development of new technologies; and

(E) consider the cost to reestablish United States Government services displaced by the reallocation of spectrum during the fifteen year period.

(3) COSTS TO THE UNITED STATES GOVERNMENT.—In determining whether a frequency band meets the criteria specified in subsection (a)(4), the Secretary shall consider—

(A) the costs to the United States Government of reaccommodating its services in order to make spectrum available for non-United States Government use, including the incremental costs directly attributable to the loss of the use of the frequency band; and

(B) the benefits that could be obtained from reallocating such spectrum to non-United States Government users, including the value of such spectrum in promoting—

(i) the delivery of improved service to the public;

(ii) the introduction of new services; and

(iii) the development of new communications technologies.

(4) NON-UNITED STATES GOVERNMENT USE.—In determining whether a band of frequencies meets the criteria specified in subsection (a)(5), the Secretary shall consider—

(A) the extent to which equipment is commercially available that is capable of utilizing the band; and

(B) the proximity of frequencies that are already assigned for non-United States Government use.

(d) PROCEDURE FOR IDENTIFICATION OF REALLOCABLE BANDS OF FREQUENCIES.—

(1) SUBMISSION OF REPORTS TO THE PRESIDENT TO IDENTIFY AN INITIAL 30 MHZ TO BE MADE AVAILABLE IMMEDIATELY FOR REALLOCATION, AND TO PROVIDE PRELIMINARY AND FINAL REPORTS ON ADDITIONAL FREQUENCIES TO BE REALLOCATED.—

(A) Within six months after the date of the enactment of this Act, the Secretary shall prepare and submit to the President a report which specifically identifies an initial 30 MHz of spectrum, to be made available for reallocation upon issuance of this report, and to be distributed by the Commission pursuant to competitive bidding procedures;

(B) within twelve months after the date of the enactment of this Act, the Secretary shall prepare and submit to the President a preliminary report to identify reallocable bands of frequencies meeting the criteria established by this section;

(C) Within twenty-four months after the date of enactment of this Act, the Secretary shall prepare and submit to the President a final report which identifies the target 200 MHz for reallocation (which shall encompass the initial 30 MHz previously designated under subsection (d)(1)(A)); and

(D) The President shall publish the reports required by this Section in the Federal Register.

(2) CONVENING OF PRIVATE SECTOR ADVISORY COMMITTEE.—Not later than twelve months after the enactment of this Act, the Secretary shall convene a private sector advisory committee to—

(A) review the bands of frequencies identified in the preliminary report required by subsection (d)(1)(B);

(B) advise the Secretary with respect to—

(i) the bands of frequencies which should be included in the final report required by subsection (d)(1)(C); and

(ii) the effective dates which should be established under subsection (e) with respect to such frequencies;

(C) receives public comment on the Secretary's preliminary and final reports under subsection (d); and

(D) prepare and submit the report required by paragraph (d)(4) of section 4.

The private sector advisory committee shall meet at least quarterly until each of the actions required by section 5(a) have taken place.

(3) COMPOSITION OF COMMITTEE; CHAIRMAN.—The private sector advisor committee shall include—

(A) the Chairman of the Commission, and the Secretary, or their designated representatives, and two other representatives from two different United States Government agencies that are spectrum users, other than the Department of Commerce, as such agencies may be designated by the Secretary; and

(B) persons who are representative of—

(i) manufacturers of spectrum-dependent telecommunications equipment;

(ii) commercial users;

(iii) other users of the electromagnetic spectrum; and

(iv) other interested members of the public who are knowledgeable about the uses of the electromagnetic spectrum to be chosen by the Secretary.

A majority of the members of the committee shall be members described in subparagraph (B), and one of such members shall be designated as chairman by the Secretary.

(4) RECOMMENDATIONS ON SPECTRUM ALLOCATION PROCEDURES.—The private sector advisory committee shall, not later than twenty-four months after its formation, submit to the Secretary, the Commission, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science and Transportation of the Senate, such recommendations as the committee considers appropriate for the reform of the process of allocating the electromagnetic spectrum between United States Government users and non-United States Government users, and any dissenting views thereon.

(e) TIMETABLE FOR REALLOCATION AND LIMITATION.—The Secretary shall, as part of the final report required by subsection (d)(1)(C), include a timetable for the effective dates by which the President shall, within fifteen years after enactment of this Act, withdraw or limit assignments on frequencies specified in the report. The recommended effective dates shall—

(1) permit the earliest possible reallocation of the frequency bands, taking into account the requirements of section 6(a);

(2) be based on the useful remaining life of equipment that has been purchased or contracted for to operate on identified frequencies;

(3) be based on the need to coordinate frequency use with other nations; and

(4) avoid the imposition of incremental costs on the United States Government directly attributable to the loss of the use of frequencies or the changing to different frequencies that are excessive in relation to the benefits that may be obtained from non-United States Government uses of the reassigned frequencies.

**SEC. 405. WITHDRAWAL OF ASSIGNMENT TO UNITED STATES GOVERNMENT STATIONS.**

(a) IN GENERAL.—The President shall—

(1) within three months after receipt of the Secretary's report under section 4(d)(1)(A), withdraw or limit the assignment to a United States Government station of any frequency on the initial 30 MHz which that report recommends for immediate reallocation;

(2) with respect to other frequencies recommended for reallocation by the Secretary's report in section 4(d)(1)(C), by the effective dates recommended pursuant to section 4(e) (except as provided in section (b)(4)), withdraw or limit the assignment to a United States Government station of any frequency which that report recommends be reallocated or available for mixed use on such effective dates;

(3) assign or reassign other frequencies to United States Government stations as necessary to adjust to such withdrawal or limitation of assignments; and

(4) publish in the Federal Register a notice and description of the actions taken under this subsection.

(b) EXCEPTIONS.—

(1) AUTHORITY TO SUBSTITUTE.—If the President determines that a circumstance described in section 5(b)(2) exists, the President—

(A) may, within one month after receipt of the Secretary's report under section 4(d)(1)(A), and within six months after receipt of the Secretary's report under section 4(d)(1)(C), substitute an alternative frequency or band of frequencies for the frequency or band that is subject to such determination and withdraw (or limit) the assignment of that alternative frequency or band in the manner required by subsection (a); and

(B) shall publish in the Federal Register a statement of the reasons for taking the action described in subparagraph (A).

(2) GROUNDS FOR SUBSTITUTION.—For purposes of paragraph (1), the following circumstances are described in this paragraph:

(A) the reassignment would seriously jeopardize the national security interests of the United States;

(B) the frequency proposed for reassignment is uniquely suited to meeting important United States Governmental needs;

(C) the reassignment would seriously jeopardize public health or safety; or

(D) the reassignment will result in incremental costs to the United States Government that are excessive in relation to the benefits that may be obtained from non-United States Government uses of the reassigned frequency.

(3) CRITERIA FOR SUBSTITUTED FREQUENCIES.—For purposes of paragraph (1), a frequency may not be substituted for a frequency identified by the final report of the Secretary under Section 4(d)(1)(C) unless the substituted frequency also meets each of the criteria specified by section 4(a).

(4) DELAYS IN IMPLEMENTATION.—If the President determines that any action cannot be completed by the effective dates recommended by the Secretary pursuant to section 4(e), or that such an action by such date would result in a frequency being unused as a consequence of the Commission's plan under section 6, the President may—

(A) withdraw or limit the assignment to United States Government stations on a later date that is consistent with such plan, by providing notice to that effect in the Federal Register, including the reason that withdrawal at a later date is required; or

(B) substitute alternative frequencies pursuant to the provisions of this subsection.

(c) COSTS OF WITHDRAWING FREQUENCIES ASSIGNED TO THE UNITED STATES GOVERNMENT; APPROPRIATIONS AUTHORIZED.—Any United States Government licensee, or non-United States Government entity operating on behalf of a United States Government licensee, that is displaced from a frequency pursuant to this section may be reimbursed not more than the incremental costs it incurs, in such amounts as provided in advance in appropriation acts, that are directly attributable to the loss of the use of the frequency pursuant to this section. The estimates of these costs shall be prepared by the affected agency, in consultation with the Department of Commerce.

(d) There are authorized to be appropriated to the affected licensee agencies such sums as may be necessary to carry out the purposes of this section.

**SEC. 406. DISTRIBUTION OF FREQUENCIES BY THE COMMISSION.**

(a) PLANS SUBMITTED.—

(1) With respect to the initial 30 MHz to be reallocated from United States Government to non-United States Government use under section 4(d)(1)(A), not later than twenty-four months after enactment of this Act, the Commission shall complete a public notice and comment proceeding regarding the allocation of this spectrum and shall form a plan to assign such spectrum pursuant to competitive bidding procedures, pursuant to section 8 of this Act, during fiscal years 1994 through 1996.

(2) With respect to the remaining spectrum to be reallocated from United States Government to non-United States Government use under section 4(e), not later than two years after issuance of the report required by section 4(d)(1)(C), the Commission shall complete a public notice and comment proceeding; and the Commission shall, after consultation with the Secretary, prepare and submit to the President a plan for the distribution under the Communications Act of the frequency bands reallocated pursuant to the requirements of this Act. Such plan shall—

(A) not propose the immediate distribution of all such frequencies, but, taking into account the timetable recommended by the Secretary pursuant to section 4(e), shall propose—

(i) gradually to distribute the frequencies remaining, after making the reservation required by subparagraph (ii), over the course of a ten-year period beginning on the date of submission of such plan; and

(ii) to reserve a significant portion of such frequencies for distribution beginning after the end of such ten-year period;

(B) contain appropriate provisions to ensure—

(i) the availability of frequencies for new technologies and services in accordance with the policies of section 7 of the Communications Act (47 U.S.C. 157); and

(ii) the availability of frequencies to stimulate the development of such technologies; and

(C) not prevent the Commission from allocating bands of frequencies for specific uses in future rulemaking proceedings.

(b) AMENDMENT TO THE COMMUNICATIONS ACT.—Section 303 of the Communications Act is amended by adding at the end thereof the following new subsection (u) (indicating that the Commission shall):

"(u) Have authority to assign the frequencies reallocated from United States Government use to non-United States Gov-

ernment use pursuant to the 'Emerging Telecommunications Technologies Act of 1991': *Provided*, That any such assignment shall expressly be made subject to the right of the President to reclaim such frequencies under the provisions of section 7 of the 'Emerging Telecommunications Technologies Act of 1991'.".

**SEC. 407. AUTHORITY TO RECLAIM REASSIGNED FREQUENCIES.**

(a) AUTHORITY OF PRESIDENT.—The President may reclaim reallocated frequencies for reassignment to United States Government stations in accordance with this section.

(b) PROCEDURE FOR RECLAIMING FREQUENCIES.—

(1) UNASSIGNED FREQUENCIES.—If the frequencies to be reclaimed have not been assigned by the Commission, the President may reclaim them based on the grounds described in section 5(b)(2) of this Act.

(2) ASSIGNED FREQUENCIES.—If the frequencies to be reclaimed have been assigned by the Commission, the President may reclaim them based on the grounds described in section 5(b)(2) of this Act, except that the notification required by section 5(b)(1) shall include—

(A) a timetable to accommodate an orderly transition for licensees to obtain new frequencies and equipment necessary for their utilization; and

(B) an estimate of the cost of displacing the licensees.

(c) COSTS OF RECLAIMING FREQUENCIES.—Any non-United States Government licensee that is displaced from a frequency pursuant to this section shall be reimbursed the incremental costs it incurs that are directly attributable to the loss of the use of the frequency pursuant to this section.

(d) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706 of the Communications Act (47 U.S.C. 606).

**SEC. 408. COMPETITIVE BIDDING.**

(a) COMPETITIVE BIDDING AUTHORIZED.—Section 309 of the Communications Act is amended to add a new subsection (j) providing that:

"(j)(1) The Commission shall use competitive bidding for awarding all initial licenses or new construction permits, including licenses and permits for spectrum reallocated for non-United States Government use pursuant to the 'Emerging Telecommunications Technologies Act of 1991', subject to the exclusions listed in subsection (j)(2).

"(A) The Commission shall require potential bidders to file a first-stage application indicating an intent to participate in the competitive bidding process and containing such other information as the Commission finds necessary. After conducting the bidding, the Commission shall require the winning bidder to submit a second-stage application. Upon determining that such application is acceptable for filing and that the applicant is qualified pursuant to subsection (j)(1)(B), the Commission shall grant a permit or license.

"(B) No construction permit or license shall be granted to an applicant selected pursuant to subsection (j)(1)(A) unless the Commission determines that such applicant is qualified pursuant to section 308(b) and section 309(a) of the Communications Act, on the basis of the information contained in the first- and second-stage applications submitted under subsection (j)(1)(A).

"(C) Each participant in the competitive bidding process is subject to the schedule of changes contained in section 8 of the Communications Act (47 U.S.C. 158).

"(D) The Commission shall have the authority in awarding construction permits or licenses under competitive bidding procedures to (i) define the geographic and frequency limitations and technical requirements, if any, of such permits or licenses; (ii) establish minimum acceptable competitive bids; and (iii) establish other appropriate conditions on such permits and licenses that will serve the public interest.

"(E) The Commission shall, within eighteen months after enactment of the 'Emerging Telecommunications Technologies Act of 1991', following public notice and comment proceedings, adopt rules establishing competitive bidding procedures under this subsection, including the method of bidding and the basis for payment (such as flat fees, fixed or variable royalties, combinations of flat fees and royalties, or other reasonable forms of payment); and a plan for applying such competitive bidding procedures to the initial 30 MHz reallocated from United States Government to non-United States Government use under section 4(d)(1)(A) of the 'Emerging Telecommunications Technologies Act of 1991', to be distributed during the fiscal years 1994 through 1996.

"(2) Competitive bidding shall not apply to:

"(A) license renewals;

"(B) the United States Government and State or local government entities;

"(C) amateur operator services, public radio broadcast services, public television broadcast services, public safety services, and radio astronomy services;

"(D) private radio end-user licenses, such as Specialized Mobile Radio Service (SMRS), maritime, and aeronautical end-user licenses;

"(E) any license grant to a non-United States Government licensee being moved from its current frequency assignment to a different one by the Commission in order to implement the goals and objectives underlying the 'Emerging Telecommunications Technologies Act of 1991';

"(F) any other service, class of services, or assignments that the Commission determines, after conducting public comment and notice proceedings, should be exempt from competitive bidding because of public interest factors warranting an exemption.

"(3) Monies received from competitive bidding pursuant to this subsection shall be deposited in the general fund of the United States Treasury, pursuant to the provisions enacted in appropriations acts.".

(b) RANDOM SELECTION NOT TO APPLY WHEN COMPETITIVE BIDDING REQUIRED.—Section 309(i)(1) of the Communications Act (47 U.S.C. 309) is amended by deleting the period after the word "selection" and inserting in lieu thereof: ", except in instances where competitive bidding procedures are required under section 309(j) of the Communications Act.".

(c) SPECTRUM ALLOCATION DECISIONS.—Section 303 of the Communications Act is amended to add a new subsection (v):

"(v) In making spectrum allocation decisions among services that are subject to competitive bidding, the Commission is authorized to consider as one factor among others taken into account in making its determination, the relative economic values and other public interest benefits of the proposed uses as reflected in the potential revenues that would be collected under its competitive bidding procedures.".

**SEC. 409. DEFINITIONS.**

As used in the Emerging Telecommunications Technologies Act of 1991:

(1) The term "Act" means the Emerging Telecommunications Technologies Act of 1991.

(2) The term "allocation" means an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunications services.

(3) The term "assignment" means an authorization given by the Commission or the United States Government for a radio station to use a radio frequency or radio frequency channel.

(4) The term "Commission" means the Federal Communications Commission.

(5) The term "Communications Act" means the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.).

(6) The term "Secretary" means the Secretary of Commerce.

Mr. DOLE. Mr. President, let me first state that I think we have an agreement that I believe will let all those who are involved in this debate make the point they wish to make. In addition, it is going to permit us to complete our business in the Senate, I hope, by early tomorrow afternoon rather than Saturday, Sunday, or sometime next week or even thereafter. So, I want to thank my colleagues in the leadership for agreeing to this procedure. I certainly think the Members on my side who had no objection to this procedure.

Mr. President, I think it is clear that we all understand that a lot of Americans are out of work and are suffering. That is why we had almost a unanimous vote on Monday in favor of involving cloture on the motion to proceed to S. 1554. I think that debate on an issue like this is certainly important and we have a responsibility to openly discuss it so the public understands not only this proposal but also any alternatives. No one disputes the pain and hardship of the unemployed. I said that on Monday before the vote, and I repeat it now.

I also think that it is fair to ask why Congress waited a week before August 1 to suddenly recognize that there was a recession?

I'm not sure there's a satisfactory answer to that question, but we are at least trying to do something here tonight.

As I indicated at the time of the markup of the Bentsen proposal last week—and I certainly do not in any way intend to criticize anyone on the committee, particularly the chairman who I have great respect for because he had a job to do, that is, to get the bill on the floor—there have not been any recent hearings on unemployment and none on the bill itself. In addition, no report has been filed; and in this Senator's opinion, very little review has occurred.

I believe that there are some significant flaws in the Bentsen proposal. First of all, it breaches the budget agreement. I want to thank the Presiding Officer, Senator SIMON, for indicating there ought to be a better way to

take care of the benefits. If we are going to have benefits, we ought to pay for the benefits.

That is the very point this Senator made in the markup. It is not that we do not want to help the unemployed; it is that we do not want to hurt the unemployed and other Americans by running up the deficit by about $6 billion. This bill sidesteps the budget agreement which, as we all know, took a lot of work and a lot of commitment.

We voted for that agreement, and now we say, oh well, that was last year. The Bentsen bill tries to say that we can violate the budget agreement because we are only taking from trust funds. Well, Mr. President, these trust funds, including the trust fund the Bentsen proposal taps into, were counted in the budget agreement.

Second, recovery is underway. The index of leading indicators rose for the fifth consecutive month. New home sales for the month of June were the highest they have been since August 1990. GNP and inflation rate estimates are also encouraging, and the Labor Department reports that the most recent data shows there is a decrease of 21,000 Americans filing first-time claims for unemployment benefits.

So with all of this good news I fear that these efforts to undermine the discipline of the Budget Act will soon make true budget reduction illusory and send the wrong economic message.

I have a letter from Chairman Greenspan of the Federal Reserve that says just that. I will ask unanimous consent it be included in the RECORD at the conclusion of my remarks. I also have some editorials that I believe everybody should take a look at. I know editorials probably do not capture many votes on the Senate floor but they made some good points.

I would include two editorials from the Washington Post and one from USA Today. The USA Today article said: "Extend jobless benefits, but do it the right way." Their idea, at least their characterization of the Bentsen bill, is that the legislation has lots of heart but lacks the brains or guts to give it life.

So I would ask unanimous consent the editorials be made a part of the RECORD.

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

[From USA Today, Aug. 1, 1991]

EXTEND JOBLESS BENEFITS, BUT DO IT THE RIGHT WAY

Our view: Helping those who have lost their jobs is a good idea, but the Democrats' plan needs a lot of work.

Congressional Democrats have come up with a great idea to help the jobless.

The idea has lots of heart, but it utterly lacks the brains or guts to give it life.

Democrats in both houses propose to extend up to 20 weeks unemployment benefits to people who have exhausted the 26 weeks of benefits they now receive. Benefits would last longest in the hardest hit states.

The proposal makes great sense.

Because of the recession, unemployment nationally has pushed past 7% for the first time in almost five years. More than 1.6 million workers have exhausted benefits this year.

With the recovery still fragile, jobs are scarce. Those who have sought work for six months deserve further relief.

That is a key part of government's job—to enable us to act as a mutual aid society during tough times.

The problem, as usual, is money—$6.4 billion. And the Democrats offer not a dime to fund their idea.

Instead, they would borrow the money, adding to the nation's already massive budget deficit and giving the voters the illusion that they're getting something for nothing. The bill will come due after today's deadbeat legislators are no longer campaigning for office.

With the nation spending $1,500 more per person than it takes in this year, that is irresponsible.

The new benefits are worth providing, and they are worth paying for by cuts in other programs—as suggested by President Bush—or new taxes—as proposed unsuccessfully by some Democrats in the House.

How expensive would it be?

A five-cent gas tax would cover it.

So would a 5% surtax on business income, with consumers likely to pay.

It's the price of eight B–2 bombers, or cutting cost-of-living allowances for Social Security in half.

Any of those options would be financially responsible. So would other choices, though most could break last year's deficit agreement between Bush and Congress. Only cuts in social programs qualify under the agreement.

However it's done, the deficit must not be increased. Good programs require guts and brains, not just heart.

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[From the Washington Post, Aug. 1, 1991]

TIME OUT ON THE DEFICIT

It's not ideas that congressional Democrats lack in this lull before an election year, but the means to finance them. Now Senate Finance Committee Chairman Lloyd Bentsen has proposed a loop around the budget rules that would permit at least one such idea to be carried out. To extend the unemployment benefits of more people who have exhausted the statutory 26 weeks in high-unemployment states, he would ask the president to join Congress in declaring an emergency. That would have the effect of waiving the rules; the extended benefits could be paid without a corresponding tax increase.

His fellow Democrats are said to have been enthusiastic, hardly a surprise. Who wouldn't want to put the president on the spot and vote for a benefit without the tax? But the arguments in favor of the proposal go beyond the obvious politics. The recession appears to be over and has indeed been of only medium size, as was generally forecast. That's small comfort to its victims. Unemployment has risen to 7 percent, or one willing worker out of every 14. The 8.7 million unemployed are 2 million more than a year ago, and the modest recovery expected is unlikely to drive that number down for a while. A decade of eligibility and benefit cuts has meanwhile clearly weakened an unemployment insurance system, once a major strand in the national safety net. The one-year Bensten proposal would only partly and temporarily restore what that decade has cost.

You could argue that if the need is so compelling the Democrats should vote the tax to match, but they won't—not enough of them, anyway. Several efforts to round up the votes in the House in recent years have failed. Mr. Bentsen says the real-world choice is thus to ignore the need or raise the deficit. That might not be so bad if extended benefits were the only bill in the queue. But assorted Democrats also want to do such things as give the middle class and poor a tax cut, make Head Start and college student aid to the poor entitlements, liberalize the food stamp program, strengthen child welfare services and—partly for the effect it would have on unemployment—increase highway spending.

The Democrats are right not to join in glossing over the painful effects of the recession. But borrow-and-spend is the wrong way to protect themselves against the charge of tax-and-spend. They say they'll reach for the bottle just this once—that insofar as they act on the rest of their wish list, they will abide by the rule of pay-as-you-go. We sure hope so.

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THE DEMOCRATS ON UNEMPLOYMENT

The congressional Democrats waited out the whole recession to come to the aid of the unemployed. Now they are managling an issue that ought to be second nature to them. In the week before heading off for a month-long summer vacation, they are belatedly trying to rush through a bill to provide needed additional benefits—but not to pay for them. They propose instead to punch about a $6 billion hole in last year's budget agreement. In doing so, they hand a resisting president not just a pretext but the obligation to veto the bill; in its present form, it ought to be vetoed. By turning to borrow-and-spend as a refuge from tax-and-spend, the Democrats end up hurting the cause they purport to help.

The legislation would reverse a budget cut of the Reagan years and make it easier for workers who exhaust the basic 26 weeks of benefits to qualify for more. The administration doesn't want to do it; it says the recession was so short and mild the step isn't necessary. But the number of unemployed is now 8.7 million, 2 million more than a year ago, and the modest recovery in prospect is unlikely to drive that number down either soon or fast. The insurance system has meanwhile been greatly weakened. It covers a much smaller share of the work force than it used to, the benefits are lower (in part because they are now fully taxed), and many workers will exhaust the standard six months. A quarter-million did so just in June.

The Democrats are therefore right to seek an extension of benefits, but for lack of votes, Senate Finance Committee Chairman Lloyd Bentsen pushed his "temporary" extension without a tax to match. The committee proposed instead that the president waive the budget rules and add the cost to the deficit by declaring an emergency. That's the wrong way to do it. House Democratic leaders, also lacking the votes but trying to strip away the argument that they were breaching the budget agreement, proposed a tax-with-an-asterisk instead. They would have empowered the president either to raise the unemployment tax (in which case the increase could be called his) or to declare an emergency, as he chose. An optional tax is a bad idea. In seeking to shed responsibility it also sheds more authority than Congress should want to give up. But it might have been better than no tax at all,

and the increase was structrued such that it would have made this payroll tax more progressive in the bargain. The Ways and Means Committee still wouldn't vote for it; it, too, has now produced only half a bill that depends on a declaration of emergency.

It's true that, having said he'd vote a bill that would raise the deficit, the president's aides said he'd also veto one accompanied by a tax increase (on the spongy grounds that the increase would retard the recovery even though the proceeds would promptly be recycled as benefit checks). But that would be a harder case for the president to make. Too bad, as a substantive matter, that the Democrats lack the audacity to put him to the test.

Mr. DOLE. Another concern with the Bentsen proposal is that it utilizes the total unemployment rate as the mechanism to trigger a program of 100-percent federally funded benefits.

This measure comes from monthly household survey data, and has never been used in the history of the unemployment insurance program. It includes new entrants to the labor force who have little work history. It includes college students who are between terms and are now going back to school.

It includes those who have voluntarily quit their jobs. Should we send them unemployment checks, extended benefit checks, when they are back in school; should we send checks to those who are between terms and those who have quit their jobs?

Another concern of mine with the Bentsen proposal is that it is a four-tier program. I think that creates problems for the States for it is going to be very burdensome to administer.

I might add that like the TUR, such an approach has never been used in the history of the unemployment insurance program.

Mr. President, this is just the tip of the iceberg. Indeed, I think that when you look at Chairman BENTSEN's proposal, notwithstanding its good intentions, that it creates more problems than it solves—not the least of which is its violation of the budget agreement.

Mr. President, what have we done? It is one thing to criticize someone else's merchandise, but what have we done? Well, we come to the floor with a substitute which is the result of careful study and review.

We have had a number of meetings which included the Secretary of Labor, Lynn Martin and the Director of the Office of Management and Budget, Dick Darman, who gave us technical assistance. We have had a number of Senators attend each meeting. We had meetings every day this week—the most recent of which ran from about 5 to 6:30 today.

The first point I want to make about our bill is that instead of the overly broad trigger approach that my colleagues have suggested, our bill would use the insured unemployment rate adjusted to include those who have exhausted their benefits. We reached out to pick up those who have exhausted their benefits.

In addition, the bill that I substitute, for myself, and Senators DOMENICI and SIMPSON, is a two-tier program of federally funded benefits that provides 5 weeks of benefits to all States, and an additional 5 weeks for a total of 10 in States whose adjusted IUR is 6 percent or more. Under our proposal, 10 States would qualify for those 10 weeks of extended benefits so we tried to be realistic and we tried to address the States that have the most serious problem.

Similar to the Bentsen proposal, our bill is a 9-month program that reaches back to cover those that have exhausted their benefits since March 1991.

In addition, our proposal seeks to right a wrong and provides parity between military and civilian claimants who are involuntarily separated from their jobs.

Finally, we think the distinguished chairman had a good idea in the earlier discussion today. We have moved the effectiveness date of ours to September 1 this year rather than October 1.

The cost of this proposal, Mr. President—an item we sometimes overlook but should not, given that we have a $3 trillion debt—is $3.2 billion, including administrative costs. This is about $1.6 billion less than the Bentsen proposal.

The foundation of our proposal is that it is financed and does not seek to avoid the bipartisan budget agreement. It is not easy to raise money for new programs but in our proposal, we incorporated provisions as I will describe which raise roughly $3.4 billion to pay for the extended benefits.

First, the financing provisions include auctioning frequencies of the electromagnetic spectrums for new communications use. I underscore the word new communications use. This provision has the impact on current frequency users and represents an auction of unusued frequencies and some currently used by the U.S. Government which are not needed.

Second, loan reforms and debt collection provisions, including permanent extension of the provision which allows the IRS to reduce the amount of any Federal refunds due to taxpayers who have defaulted on student loans.

That is widely approved by the American people. If we owe the Government money, and have a tax refund coming, why not take the tax refund and make the payment? We do it now. We want to make it permanent.

We also have other debt collection provisions including credit checks and other customary credit management standards.

In short, Mr. President, we believe that our proposal is a fiscally responsible package. It pays for itself, it does not increase the deficit. That ought to be music to the ears of everybody in this body, the American people, and the unemployed, who are out there looking for jobs, and the jobs are not going to get any better if we keep increasing the deficit.

It is a program that minimizes administrative costs and avoids creating disincentive effects that discourage workers from seeking employment in times of economic recovery such as we are not entering.

Finally, Mr. President, as I have said before, we want to pass something that the President may sign. I will include in the RECORD the analysis by the Executive Office of the President, OMB, wherein they indicate they would not oppose our substitute. In fact, I went on to ask: What does that mean? Will the President sign the legislation, if it gets to the White House? And the answer is yes.

So, the real question is—will the President sign the so-called Bentsen proposal, or will he sign our proposal? I think the answer is clear. He has indicated he cannot support the proposal which violates the budget agreement, and which increases the deficit. He indicated just this afternoon that they have no opposition to the so-called Dole-Domenici-Simpson proposal, and he would be prepared to sign it.

For the unemployed worker who is looking for help, the choice ought to be pretty clear. For those U.S. Senators who want to help the unemployed worker, the choice ought to be clear. If we are going to have benefits, let us pay for them not by raising taxes, but by cutting spending, as most Americans would agree. So I urge all of my colleagues to support the pending substitute.

I will also include in the RECORD the statement of the administration's policy, and the letter from the Federal Reserve, and the editorials I referred to previously.

I reserve the remainder of my time and yield as much time as he may consume to the Senator from New Mexico.

I ask unanimous consent that the material I have referred to be printed in the RECORD, including a summary of our proposal.

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

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,
*Washington, DC, July 31, 1991.*

Hon. ROBERT DOLE,
*Minority Leader, U.S. Senate, Washington, DC.*

DEAR SENATOR: The Congress and the administration face a difficult decision in their deliberations over proposed changes in the unemployment compensation system. We all have considerable sympathy for the hardships caused by unemployment, especially for those who have experienced a prolonged spell of joblessness and who may be exhausting their unemployment insurance benefits. At the same time, we have to recognize the crucial importance of the long-term discipline imposed by last fall's budget agreement and its beneficial effects on financial markets. Issuance of long-term securities by

the Federal Government and by corporations in the process of restructuring their balance sheets has been substantial of late. Aided in part by the prospect that the budget agreement would impose restraint on government bond issuance over time, the market has absorbed this supply with minimal disruption. However, I am most concerned that breaching this discipline would alter perceptions of fiscal restraint and result in some edging up of long-term interest rates.

Sincerely,

ALAN GREENSPAN.

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[From the Executive Office of the President, Office of Management and Budget, Washington, DC, Aug. 1, 1991.]

STATEMENT OF ADMINISTRATION POLICY ON S. 1554–EMERGENCY UNEMPLOYMENT COMPENSATION ACT

(Bentsen (D) Texas and 14 others)

S. 1554 would provide 100-percent Federal funding for temporary supplemental unemployment compensation benefits in all States. The bill does not include offsets for this increased direct spending, as required by the Budget Enforcement Act of 1990 (BEA). Instead, bill language specifies that the provisions of S. 1554 become effective only if the President designates all spending under the bill as an "emergency" for the purposes of the BEA.

S. 1554 would create an expensive, poorly designed Federal program that would slow the return to work of those it purports to serve. The program would provide from four to twenty weeks of additional benefits through a complex and cumbersome four-tier system. Previous experience demonstrates that such a system would result in benefit delays, payment inaccuracies, and escalating administrative costs. Federal spending would be further increased under an option that allows States to shift costs from the Extended Benefit program, under which the Federal Government pays 50 percent of costs, to the new wholly Federal program.

Benefits under S. 1554 would be distributed using States' total unemployment rates (TURs). For 39 States and the District of Columbia, the TUR is based upon econometric models and cannot be seasonally adjusted; for 11 States, the TUR is based on sample survey data. TURs are subject to revision after they are published. They clearly are a much less sound basis for distributing billions of benefit dollars than the insured unemployment rate (IUR), which can be seasonally adjusted and is based on tax and claims records that can be readily verified. Moreover, the TUR includes many people who do not—and would not—qualify for benefits under S. 1554 and do not compete for jobs with those who are eligible for unemployment insurance.

The administration is concerned about the human costs of the recession. However, the President's senior advisers would not recommend that he designate the spending in S. 1554 as an "emergency" for the following reasons:

The Administration and most private forecasters believe that the recession is ending and the recovery is underway. Preliminary GNP figures show an increase for the second quarter, lending weight to this view. The unemployment rate typically peaks a few months after the economy bottoms, and thus it should be near its peak. It should decline with the continued economic growth forecast for the rest of this year and the next by most private economists.

In this context, the Administration does not believe it is appropriate to declare an "emergency" under the BEA. Although it is possible for the "emergency" designation to be used when the President and Congress agree, it would be counterproductive to abandon pay-as-you-go discipline as the Nation comes out of recession.

By historical standards, the current unemployment rate would not be cause for congressional action. When Congress put the current extended benefit program State triggers in place in 1982, the unemployment rate was 9.8 percent—much higher than the current rate. When Congress subsequently created the temporary Federal supplemental benefits program, the unemployment rate exceeded 10 percent—and when Congress allowed that program to expire in 1985, unemployment was still higher than the current rate.

It is arguable whether the current unemployment insurance system again requires structural change, but any change should not exacerbate the problems of unemployment. Economic analysis has shown that additional weeks of unemployment benefits will increase the unemployment rate.

Without offsets, the Federal Government would have to borrow $4.6 billion to fund S. 1554, increasing the Federal debt and deficit by this amount.

In addition, S. 1554 would provide 26 weeks of benefits to members of the Armed Forces who decide to leave the service voluntarily, either for retirement or a return to civilian life. Civilians who voluntarily quit their jobs generally are disqualified from receiving benefits. Thus, S. 1554 would provide significantly more generous benefits to servicemembers than are available to civilians. In previous legislation, the Administration has supported additional coverage for servicemembers who involuntarily leave the service—such as those who may be affected by Defense force reductions—but not for those who voluntarily end their service.

For all the above reasons, the Administration opposes passage of S. 1554.

It is the Administration's understanding that Senator Dole may propose a comprehensive substitute that would provide five weeks of additional benefits to all states and ten weeks of additional benefits to states where the insured unemployment rates exceeds six percent. The cost of the substitute appears to be fully offset under the BEA pay-as-you-go rules, and the proposed offsets are consistent with Administration policy. Because the Dole substitute conforms to the Budget Enforcement Act, the Administration would not oppose passage of this amendment.

COSTS OF S. 1554

S. 1554 would increase direct spending and the budget deficit. Based on the economic assumptions in the mid-session review of the President's budget, OMB's preliminary scoring estimates for this bill are presented in the table below.

*Preliminary cost estimates—Fiscal Years*

[In millions of dollars]

| | |
|---|---|
| 1991 | |
| 1992 | 4,233 |
| 1993 | 115 |
| 1994 | 120 |
| 1995 | 120 |
| 1991–1995 | 4,588 |

DOLE ALTERNATIVE TO S. 1554

PROPOSAL

A two-tier program of federally funded benefits that provides 5 weeks of benefits to all States and an additional 5 weeks (for a total of 10 weeks) in States whose insured unemployment rate (IUR), adjusted to include exhaustees, is at 6 percent or greater.

Program would be in effect from 09/1/91 through 5/31/92.

Program would reach back to cover UI claimants who have exhausted benefits since March 1991.

Benefits available under this program will be offset against benefits otherwise available when a State triggers on EB so that a beneficiary will receive a maximum of 39 weeks of benefits (26 weeks UI and 13 additional) in States on EB or 31 weeks in States not on EB and with less than 6 percent adjusted IUR.

Unemployment compensation for ex-service personnel (UCX) will be liberalized to provide up to 26 weeks of benefits with only one waiting week (consistent with State law) for those who leave the service involuntarily. Personnel who leave voluntarily will not qualify for benefits, consistent with rules for civilian workers. These changes will be permanent.

A one-time, temporary change will be made to the UCX rules for the period of this law to provide benefits for reservists called up for 90 days or more. The 180-day minimum call-up period in permanent law will be retained unchanged.

Costs will be $3.2 billion, including administrative costs, all in FY 1992.

FINANCING

Auction frequencies of the elecromagnetic spectrum for new communications use:

Loan reform and other debt management and collection enhancement provisions:

Extension of expiring tax provision: would permanently extend the IRS tax refund offset program, which allows the IRS to reduce the amount of any Federal refund due to taxpayer by the amount of debt owed and pay that amount to the Federal agency owed:

Other reform proposals: would establish enhanced collection and default management activities, including requiring credit checks on borrowers over age 21; provide the Secretary the authority to obtain information from other government agencies concerning the most recent address of a student borrower; and requiring the borrower to provide identifying information at the time of loan application and exist from a school:

Total financing package of $3.4 billion.

Mr. DOMENICI. How much time does the Republican leader have?

The PRESIDING OFFICER (Mr. WELLSTONE). Seven minutes 18 seconds.

The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I am going to make four points as quickly as I can.

First, regarding this amendment that Senator DOLE has introduced on behalf of himself, Senator SIMPSON, and myself, the Congressional Budget Office has evaluated for us the two principal sources of revenue that are to be used to pay for this program, and I can report to the Senate that it is neutral. In fact, it is about $200 million on the long side.

The first point is that this amendment is paid for.

My second point is—and I know people are not really interested in budget language—but let me suggest that it was only 2 months ago on the floor of this Senate when the budget resolution came before the Senate. We were debating that resolution, and the distinguished chairman, the Senator from

Tennessee, was arguing before the U.S. Senate on behalf of five reserve funds that were in that budget resolution—five.

I called to the Senate's attention that, among the five, there was one that would cover unemployment compensation, under the heading of "taking care of the recession." There was one of the reserve funds that covered unemployment compensation. And it is interesting that then, when we were arguing, the chairman of the Budget Committee said, "We are now on a pay-as-you-go program." And he was referring to, and arguing about, the reserve funds. He said: "The days have ended of borrowing and spending." That is not a Republican talking. That was the chairman of the Budget Committee. "The days of borrow and spend and the beginning of pay-as-you-go," said the chairman. And he said at that time, "In layman's language, these reserve funds simply say you have to pay for it. No more of this borrow and spend that has raised the national debt by almost $2 trillion in a scant decade. No more of this business of passing it on to future generations and saying they have to pay for it." Continuing the quote: "That is what the budget summit agreement was all about. If you want a program, if you want to expand it, if you want to meet the needs of this country, then pay for it. That is why we entered into the agreement. That is why I supported it."

I repeat, that was said on behalf of the five reserve funds, one of which is unemployment compensation and, tonight, a bill is offered that does not even seek to pay for itself. Pay-as-you-go is gone; in lieu of it, we have another approach to budgeting——

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

Mr. DOMENICI. I will yield in a moment.

We have another approach to budgeting. At the summit, we said if the President and Congress agree that there is an emergency, then you do not have to pay as you go. You can break the budget and spend, and it does not count.

Well, I submit tonight, what is being attempted, is to say we are not interested in getting the President's concurrence. We are sending him a bill, and the bill is going to say in it, we are not paying for this. And if you declare it an emergency, Mr. President, then it goes into effect under the emergency clause.

I submit that there really is no budget agreement left, because Congress can decide every time they want something new; that they will send it to the President and say, we think it is an emergency, if you agree, there is no budget limitation.

Frankly, I hope the President does not declare it an emergency. I wish the Senate would adopt the Dole amendment, because the President will sign it, and he does not have to declare an emergency. It will go into effect, and we will pay for the benefits. And if you need more time, you can come back later and discuss the length of the payment extension that is included in the Dole amendment.

From this Senator's standpoint, I summarize: The Dole amendment is neutral; it pays for itself. The other one, the bill, is at least $6 billion added to the deficit. That is what the Congressional Budget Office says, not OMB.

Clearly, we intended this kind of program to be on a pay-as-you-go. That is not the Senator from New Mexico; that is what the U.S. Senate thought when we voted for the budget resolution only 2 months ago.

And last, if you want to start using the emergency clause this way, I believe you have every opportunity to ignore the budget resolution, the appropriation caps, and send him freestanding spending bills, and put the emergency in his lap and say, if you do declare it, we spend it; if you do not, it is not an emergency. And that becomes the end of the budget resolution and the 5-year agreement.

I yield the floor.

Mr. DOLE. I yield 2 additional minutes.

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

Mr. DOMENICI. I will be pleased to.

Mr. SASSER. Is the Senator from New Mexico aware that we were talking in the reserve fund language there about permanent programs? What we are talking about here is temporary relief for an emergency situation as a result of substantial unemployment, an emergency situation as a result of the long-term unemployment compensation benefits not being triggered by problems within the system?

The Senator is undoubtedly aware, I would suppose, that the President's own Office of Management and Budget has defined what an emergency is. And it says, No. 1, that "it is essential." Is it not essential to deal with the problems of 3 million unemployed people? It is sudden when people lose their jobs——

Mr. DOMENICI. Does the Senator have a question?

Mr. SASSER. I am asking the Senator if he agrees with that.

Mr. DOMENICI. Of course, I agree. But I have looked at the record, and I do not see a single use of the word "temporary" when the distinguished Senator was debating pay-as-you-go for new problems. My only recollection, when we resisted the reserve funds, was that the Senator rather frequently said, "What about unemployment compensation?" That is all I remember.

Mr. SASSER. Well, so the Senator is saying that he does not believe that unemployment of an unforeseen high level that comes as an emergency could not be paid for out of the emergency clause or on a temporary basis? If that is a question——

Mr. DOMENICI. Mr. President, I have stated my case. I believe that at this time in our economic history that the budget summit contemplates that we pay for an expansion or extension of unemployment compensation. That is our position. We have paid for the one that we offer, and we obviously do not believe that we should incur more debt for it.

The PRESIDING OFFICER. The Republican leader's time has expired.

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 3 minutes, the time not to be charged.

The PRESIDING OFFICER. The Senator from West Virginia [Mr. BYRD] is recognized.

Mr. BYRD. Mr. President, Thomas Carlyle once wrote: "A man willing to work, and unable to find work is perhaps the saddest sight that fortune's inequality exhibits under the sun."

I agree with Carlyle's description. Every time I go back to my home State of West Virginia, I see the unemployed. I see men and women who want to work. I see frustration and sadness in their eyes. I listen to their tales—how they get up early in the morning and drive from county to county, searching for work. I hear how they come home in the evening, defeated, unable to find work. These are people who are trying desperately to keep their heads above water. They juggle bills and finances to try to make their mortgage or rent payments. They try to make the car payment and still have enough money to feed and clothe their children. These are people who are trying desperately to keep their homes. They rely heavily on the unemployment compensation benefits program, which they have paid into and have earned, to help get them through these tough times.

The recession has had a devastating impact on working Americans. Seven percent of the American work force is now out of work. That is 8.75 million Americans who are out of work. These individuals are not asking for a handout. They want to work, but they cannot find it; 8.75 million is the highest number of unemployed in nearly 5 years. The number of unemployed has increased more than 2 million in the past 2 years alone.

In West Virginia, the unemployment rate is 9.7 percent—the highest in the Nation. Many of these people are long-term unemployed. They have collected their 26 weeks of unemployment compensation, and now they are floundering. The recession that was supposed to be "short and shallow," is not "short and shallow" for them. It has been long and hard, and it is still long and hard, and there is little relief in sight.

The Federal Government currently has a program in place, the goal of which is to help the long-term unem-

ployed. The program provides Federal extended unemployment benefits for up to 13 additional weeks if certain qualifications are met. This program is running a surplus of almost $8 billion. By the beginning of fiscal year 1992, the fund is expected to overflow its statutory limit of $7.54 million for that fiscal year, forcing a transfer of money to other accounts. The money is there to help those who need it. Why then are they not being helped?

The problem, Mr. President, is that the qualifications for States to be eligible for the extended benefits program are too difficult to meet. Only three States—Alaska, Maine, and Rhode Island—currently qualify for the program. The very program that is supposed to help the long-term unemployed, is not. West Virginia barely qualified for the extended benefits program during one week in April. The very next week, the State was no longer qualified. West Virginia, with the highest unemployment rate in the Nation today, is currently ineligible for these additional benefits. Five thousand three hundred jobless workers in West Virginia have exhausted their 26 weeks of regular benefits, and are now without any type of unemployment benefits. At the same time, the Federal extended benefits program has an unused $8 billion surplus.

More than 2.8 million workers across this country have exhausted their regular unemployment insurance benefits between July of last year when the recession began and July of this year. By the end of the fiscal year, more than 3 million Americans will have exhausted their unemployment benefits, and 3.4 million are projected to exhaust their benefits by 1992.

What is going to happen to these people and their families? Who is going to support them? Are we going to allow them to lose everything?

We need to help these Americans. For them the recession is not over. For them, the economy is not on an upswing. While the President has focused on emergencies overseas, the emergency at home has been ignored. I support an emergency overhaul of this system. S. 1554, the Emergency Unemployment Compensation Act, would help these victims of the recession.

S. 1554 would provide 20 weeks of extended unemployment benefits in those States with an 8 percent or above total unemployment rate. States with a 7 percent total unemployment rate would receive 13 additional weeks of benefits. States with a 6 percent total unemployment rate would receive an additional 7 weeks of benefits. All other States—regardless of their unemployment rate—would receive 4 additional weeks of extended Federal benefits.

The total unemployment rate would be calculated using a 6-month moving average. This emergency program would be in effect from October 1, 1991, to June 30, 1992, and would "reach back" to cover unemployed workers in States with unemployment rates of 6 percent or higher that had exhausted normal unemployment benefits on or after April 1, 1991.

An important part of this emergency proposal would also change the way in which ex-service members are treated so that they will be treated in the same way as other unemployed workers. Earlier this year, we heard a lot of talk about supporting our service men and women in Operation Desert Storm. Now that most of those soldiers have returned home, in triumph and glory, let us not turn our backs on them in their fight against the despair and indignity of unemployment.

S. 1554 would also establish an Unemployment Compensation Advisory Council to study the problems of the unemployment insurance system. The Council will be an ongoing advisory body with members appointed for 4-year terms.

Mr. President, earlier this year the President asked the Congress to pass emergency legislation to provide economic assistance to the Kurds in Iraq. He has asked Congress for money to help the people in Turkey, Sudan, Angola, Bangladesh, and Ethiopia. I do not criticize him for assisting those in need. In fact, I support the President in some of these efforts to assist other countries. But it is now time for us to help those in need in our own country. The money is there. The need is there. We can no longer ignore the plight of the long-term unemployed. I support Mr. BENTSEN's committee substitute, as modified.

Mr. HOLLINGS. Mr. President, I rise to speak in opposition to the proposal contained in the substitute offered by Senator DOLE to raise revenue from users of the radiofrequency spectrum. This proposal has been raised by Senator DOLE without giving me or the other members of the Commerce Committee any prior notice. These issues are squarely under the jurisdiction of the Commerce Committee, which I chair. For the Senate to act now on this proposal would be to ignore the substantial amount of work and effort in my committee to come up with a reasonable resolution of these issues. I cannot support any controversial proposal such as this, which could have an enormous impact on the entire communications industry, without giving my colleagues on the Commerce Committee an opportunity to fully explore these issues.

Four years ago, I proposed a transfer fee on those who sell their communications licenses. This proposal was soundly defeated on the floor by a wide margin. Just last month, my Commerce, State, Justice Appropriations Subcommittee voted against an administration proposal to raise an additional $65 million in FCC user fees. This proposal was widely opposed by members of the industry and received no support in my subcommittee. Meanwhile, the chairman of the Communications Subcommittee, my good friend and colleague, Senator INOUYE, has already announced that we will hold hearings on the issue of spectrum auctions in September. The Commerce Committee is currently working on these issues and should not be shown such disregard. I strongly oppose the substitute amendment offered by Senator DOLE.

Mr. BENTSEN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Texas has 3 minutes and 25 seconds.

Mr. BENTSEN. Mr. President, as I listened to the distinguished Republican leader, for whom I have the very highest regard, he said this was the first time that a four-tier system had been used, and that is not correct. Back in 1983, that was done. And we are doing it again, and we are doing it for a very specific and justified reason, because you see higher levels of unemployment in some States than in others, and it is more difficult in those States to find a new job. It is tough out there trying to find a job these days.

So we go to four levels, to try to adjust benefits carefully to varying conditions in the States. It has been done before and we are doing it again. And it works.

The other question was the question about insured unemployed as opposed to total unemployment numbers being used. The problem you run into there is the variance among States. Some have tightened qualifications, made it tougher and tighter to qualify for unemployment benefits.

Take my own State, with 6½ percent total unemployed, but less than 2 percent insured unemployment. You know what total unemployment would have to go to my State? It would have to go to 15 percent—15 percent—before the insured unemployment rate would get up to what the present law requires to provide additional benefits. And that same thing is true of Florida. Only three States qualify. You are also seeing total unemployment being used more and more for Federal programs.

He is quite right that the total unemployment rate used to be not too accurate. But now, the Bureau of Labor Statistics is able to provide better numbers. And we are talking about using a six-month rolling average in this bill.

Another point. My friend from New Mexico—a very able Member of this body—when he talks about emergencies, you have to remember that the President of the United States said that aid to the Kurds was an emergency, and he wanted money to take care of them and to help them. I voted

with him. The Congress voted with him and agreed that it was an emergency.

When he said he wanted money for the turks, we agreed. We went along with him. It takes two under the budget agreement to make it an emergency.

Each time that the President, whether it was the Israelis or the Turks or the Kurds, asked the Congress to agree to an emergency designation, we agreed.

This time we are talking about folks here, folks at home, folks out of work.

I would like to see any Member of this Senate or the OMB or administration try to explain to the family of an unemployed worker, whose benefits have run out, who is having a tough time meeting the payments on the car so he can go out and look for work, tell him or her that it is not an emergency. These needs are real, they are serious, and they are urgent.

We did not provide for them a year ago, when we were working on the budget agreement.

When we were developing the budget agreement last year—we spent 4 months at it—we put into the agreement provisions for just such an emergency. Did we know we were going to have these kinds of conditions and that unemployment rates would be this high? Of course not. Because unemployment indicators lag. For the first 2 or 3 months of a recession, the economists all argue as to whether or not we are in a recession. During the last recession we did not peak on unemployment until 7 months after the recession was technically over.

The taxes needed to finance these benefits have been collected for this specific purpose. We are talking about spending approximately $5.2 billion and have almost $8 billion in the fund right now. It would be unequitable and it would be unnecessary to tax employers again for the purpose of paying extended benefits.

Members of the Senate know that the OMB Director, Mr. Darman, does not support this legislation as an emergency measure and has advised us that he is going to recommend to the President that he not accept this legislation with the emergency designation. We could go on debating this for weeks. If we did, hundreds of thousands of workers would be out of work and unable to receive the unemployment benefits to which they are entitled.

Mr. President, I believe it is the obligation of a government to serve the people. As elected officials we cannot work miracles, but we have a responsibility to look for ways to help. We have been quick to respond to emergencies abroad. I hope we can show the same kind of concern and determination, to help folks here at home who are out of work, who have fallen victim to this recession. There are 3 million reasons to extend benefits to those who need our help. These are benefits that they have earned, and that employers have paid for. The unemployed need these benefits now, and will need them months ahead.

Today, we have an opportunity to help families pay the rent, help them buy gas for the car, help them put food on the table. We have an opportunity to keep the dream alive for working Americans. I think it is time to stop the politics and the posturing and look for things that we can do together to get American workers back on their feet and get this economy of ours moving again.

Mr. DOLE. Mr. President, if I may respond to the chairman's comments, with regard to the 4-tier program used in 1983. The chairman was correct and I misspoke. In one phase of the Federal Supplemental Compensation Program in effect during 1982 to 1985, there were four tiers of benefits. Our recollection is that the four tiers were in place for a very brief period of time and the program was extremely complex for States to administer and led to many errors.

With regards to the chairman's comments about the emergency declaration for the Kurds—the $336 million for the Kurds did not come out of the U.S. Treasury. It was financed out of interest on Desert Storm funds. I also don't think I need to remind the chairman of those pictures of literally thousands of people huddled together dying from disease, exposure, and starvation.

In connection with the funds for Turkey and Israel, let's not forget the economic havoc wreaked on their economies as a result of the Persian Gulf war and the support they gave us during that extremely important effort.

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

Mr. DOLE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

The question is on agreeing to the substitute amendment offered by the Republican leader.

The amendment (No. 1018) was rejected.

Mr. BENTSEN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as modified.

The committee amendment, as modified, was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. KASTEN. Mr. President, it seems that the focus in Washington is on Band-aid approaches like extending unemployment benefits for people hurt by bad economic policies. For example, job-destroying policies like the 10-percent excise tax on boats are throwing 19,000 people in the boat manufacturing and 40,000 people in the boat retailing out of work, many of whom live in Wisconsin.

Wouldn't it be better to just have good economic policies to begin with?

Today, we are passing legislation that reaches out to people when they lose their jobs—without addressing an equally important question of how to keep their jobs and create jobs.

I know that we can do better than that. In fact, we must do better than that.

Expanding unemployment benefits does absolutely nothing to prevent or more importantly, reduce unemployment. It simply treats the symptoms instead of curing the underlying disease of slow economic growth and lingering joblessness.

The sole focus of this week's debate on unemployment benefits misses an equally important point: employment benefits. We ought to be talking about the real issue facing America's workers and families: job creation.

How do we keep creating new jobs, investing in new plants and new small businesses, and making sure that workers find the jobs we help create?

The only real cure for unemployment is rapid economic growth—which in turn creates well-paying, private sector jobs.

Full-time jobs in the private sector with a future. That's the best cure for unemployment.

The amendment I had intended to offer an amendment to S. 1554 outlines a jobs creation agenda. It builds on the successful approach of the 1980's—the approach that unleashed the job creation miracle that put 21 million Americans to work.

Low-tax, incentive-based policies to promote work, saving, and investment caused the economic expansion of the 1980's.

When we let workers, entrepreneurs and small businessmen do what they do best—innovating, producing, investing—we're unleashing a ballistic force of wealth creation and job growth.

My amendment expresses the sense of the Senate that Congress should immediately enact legislation to promote plant openings and job creation.

This amendment calls for a reduction in the capital gains tax rate for long-term investment, indexed for inflation. This would provide a dramatic new incentive for investment on job-creating small business ventures.

Second, the amendment calls for making the employee educational assistance tax exclusion permanent. This incentive would promote job advancement through new training.

One of the most important measures in my plant opening and job creation

amendment is establishment of enterprise zones to promote small business investment and job creation in the Nation's distressed rural and urban areas.

Finally, the amendment proposes that we give America's senior citizens more freedom and incentives to work and produce by phasing-out the Social Security earnings test over 5 years.

If we declare an emergency for unemployment initiatives, we ought to declare an emergency for these employment initiatives, too.

We ought to also be debating how to promote economic recovery and job creation.

That's what American families and workers care about—how are we going to save their jobs, improve their jobs and create new ones?

Michael Boskin says the recession is over. But without new incentives for work, saving, and investing, the economic recovery may not be very strong.

Our challenge is to continue the proven approaches of the 1980's to get the economy moving into higher gear.

The issue is not how to manage joblessness and economic decline. The real issue is how to create jobs and spark economic growth.

The real emergency is how to create full-time private sector jobs for the future. I would hope that the Senate will soon consider initiatives to help the unemployed by creating jobs. I ask unanimous consent that my amendment be printed in the RECORD:

At the end of the bill add the following new section:

**SEC. . SENSE OF THE SENATE WITH RESPECT TO PLANT OPENING AND JOB CREATION INCENTIVES.**

(a) FINDINGS.—The Senate finds that—

(1) Expanding unemployment benefits does nothing to prevent and reduce unemployment—it simply treats the symptoms instead of curing the underlying disease of anemic economic growth and lingering joblessness;

(2) The only real curse for unemployment is rapid economic growth which creates well-paying, private-sector jobs;

(3) Low-tax, incentive-based economic policies to promote work, investment, saving, and entrepreneurship caused the economic expansion of the 1980s which created 20 million new jobs and raised real middle American family income by 12 percent;

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Congress should immediately adopt legislation that promotes plant openings, economic growth, and job creation, and that such legislation include the following incentives for work, saving, and investment:

(1) reduction in the tax rate on capital gains for both individuals and businesses, and indexation of the basis for inflation, to provide incentives for long-term investment in job-creating small business ventures, and to eliminate the unfair taxation of phantom gains due to inflation;

(2) permanent extension of the tax exclusion from gross income of the amounts paid for employee educational assistance to increase job opportunities for workers, and promote job advancement through training and education;

(3) estabishment of enterprise zones with Federal tax incentives to promote small business investment and job creation in the Natioin's economically distressed rural and urban areas; and

(4) phaseout of the Social Security earnings limitation over five years which would give America's senior citizens more freedom to work and produce.

Mr. DURENBERGER. Mr. President, while all the Nation welcomes the signs of improved economic health, many Americans are still hurting as they look for work and watch their unemployment benefits either rapidly running out or already expired. I am pleased to support this legislation to provide extended benefits because it will allow this important program to fulfill its role as a safety net for American workers and help to give unemployed Americans a leg up as the recovery continues.

Although this bill is not a perfect piece of legislation, the needs of unemployed Americans cannot wait for every aspect to be ironed out and every question to be answered. These needs must be addressed now.

While Washington may not be able to prevent recessions, we do have tools at our disposal to cushion the blow for many Americans. This legislation is one of those tools, and now is the time to use it.

The unemployment trust funds are designated for assisting workers who, through no fault of their own, find themselves out of work for long periods. And that is what this legislation will do.

While my State of Minnesota has not been hit as hard as some others, recessions in the Midwest have tended to lag behind the slowdowns on the coasts. Fortunately, this legislation provides the flexibility for Minnesotans to receive extended benefits, in the event that such a need should arise.

I am hopeful, Mr. President, that tapping these dedicated reserves will ensure that the recovery now underway will not lose speed and that any lingering effects of the economic slow down will be minimized for the many Americans who have born the brunt of this downturn.

Mr. SIMPSON. Mr. President, the proposal put forward by the Republican leader is a good one. It addresses the central issue before us—the financial security of millions of workers who, through no fault of their own, have lost their jobs to the current economic conditions, and it addresses this issue in a most direct and sensible fashion.

Mr. President, the past few months have been difficult, but it has been especially tough for the economies of certain States and regions in the country. Recognizing that fact, this measure provides a basic level of supplemental assistance across the board, and targets additional assistance to workers in those States were the unemployment situation is the most severe. All this is done without adding unnecessary paperwork and beauracracy to State and Federal programs.

Further, Mr. President, this measure will provide desperately needed assistance to millions of workers throughout the country without breaking the bank. The Republican leader has offered a proposal that is fiscally responsible. One that keeps the accord we reached last year in that bloody battle over the budget.

That is an important point. In fact, it is the central point of this debate. The proposal of the distinguished chairman of the Finance Committee carries a price tag of $5.8 billion. Under the budget agreement, we are supposed to find a way to pay for programs that increase the budget deficit—even the worthy ones. Well, the proponents point out, there is a provision in the Budget Act that permits the President to get around the pay-as-you-go-rules by declaring something an emergency. That is not quite honest in this situation.

Mr. President, the last time we enacted a special, supplemental unemployment benefit our unemployment rate was over 10 percent. We discontinued that program when the rate fell to just over 7 percent. Now, when the unemployment rate is below the cutoff, and when the economy is on its way back, the proponents of the original bill want to declare an emergency rather than find an honest way to pay for these new benefits.

I urge my colleagues to support the Dole substitute, which I am proud to cosponsor. It has heart and guts. It is sensitive to those truly in need, while demonstrating the fiscal responsibility that we promised Americans we would show to them after the agonizing budget agreement we entered last year.

Mr. BRADLEY. Mr. President, I rise as cosponsor of this legislation to provide additional unemployment benefits to those hardest hit by the current recession. This program will help relieve the financial burdens faced by tens of thousands of New Jersey families who are currently having trouble putting food on the table.

This new program will provide 20 weeks of extended unemployment benefits in those States with an unemployment rate that is 8 percent or higher, 13 weeks in those States with a 7 percent unemployment rate, 7 weeks in those States with a 6 percent unemployment rate, and 4 weeks for all other States. Under current law, the unemployed in most States are only eligible for 26 weeks of benefits. New Jersey now provides 6½ weeks of extra benefits for those unemployed; this program would provide the long-term unemployed in New Jersey with an additional 7 weeks of benefits, for a total of 38½ weeks.

The proposal also changes the way in which ex-servicemembers are treated,

so that they are treated the same as other unemployed workers. Under present law, unemployed former members of the Armed Forces receive 13 weeks of unemployment benefits. Other unemployed workers receive 26 weeks of benefits. Under this proposal, unemployed ex-servicemembers would receive unemployment benefits on the same basis as unemployed civilians. In addition, Reserve members who have been called to active duty would be eligible for unemployment benefits after serving a continuous period of 90 days, instead of having to meet the current 180-day requirement.

For many families—especially the long-term unemployed—this recession has been disastrous. This year, over 3 million people will be out of work for so long—more than half a year—that their unemployment benefits will have run out. And many New Jersey workers are suffering more than workers in many other parts of the country. In just the past 3 months, roughly 40,000 of the unemployed in New Jersey have been out of work for so long that their unemployment benefits have run out. We need to fix the Federal Government unemployment compensation rules so we can provide more benefits to families in need.

Mr. President, nationally, the unemployment rate has now reached 7 percent. New Jersey's unemployment rate has been about 6.7 percent for several months, about 40 percent higher than a year ago. About 270,000 New Jerseyans are now out of work, and there are no signs that the recession is ending any time soon. The President's advisors may say that the recession is over, but that is not what I am hearing back home. These families cannot afford to wait any longer. The time to act is now.

Mr. BRADLEY. Mr. President, I would like to congratulate the distinguished chairman of the Finance Committee for responding to the crisis of long-term joblessness quickly and appropriately.

In New Jersey, the economic pain has been deeper and hit earlier than in some other regions. More than 90,000 people have exhausted their benefits in New Jersey since the beginning of the year. I am proud to say that my State, which like the Federal Government has an ample fund for unemployment benefits, responded early to the crisis with State-funded emergency unemployment benefits that provide up to 6½ weeks of desperately needed continued assistance.

I mention this fact only to ask the distinguished chairman to clarify my understanding of the implementation of Federal benefits in a State such as New Jersey that took the initiative to provide State-financed emergency benefits until we in Washington faced up to the need to help the continuing unemployed throughout the Nation. Because the State acted in the hope that the Federal Government would recognize the emergency and respond, it designed its program to trigger off as soon as we enacted Federal emergency benefits. It is my understanding that the provision in this bill limiting eligibility to those who have "no rights to compensation [under] any other State unemployment compensation law" will not affect the eligibility of New Jersey's continuing unemployed for Federal benefits, because the State program will trigger off.

Mr. BENTSEN. I thank my colleague for helping us clarify these issues. This legislation should honor and complement the laws of States such as New Jersey that took the initiative to aid the long-term unemployed. It is my understanding, and, as I understand, also the interpretation of the Department of Labor, that all eligible unemployed persons in New Jersey will receive benefits under this bill so long as they are not simultaneously receiving benefits under State law.

Mr. BRADLEY. I thank the chairman. Let me further clarify that this bill would also leave States with the right to reassert themselves once the Federal program runs its course. Unemployment, as we know, is a lagging economic indicator, and even when this recession ends, jobs may not become available for all those who have been out of work for many months. Assuming that New Jersey exhaustees will receive 7 weeks of emergency benefits under this bill, the State should have the right to use its funds to help those who remain out of work after those 7 weeks are exhausted. Is it the chairman's understanding that the State's reassertion of its own emergency benefits once these Federal benefits expire will also not jeopardize eligibility for Federal benefits?

Mr. BENTSEN. I share my colleague's commitment to leave States free to respond to their own unemployment crises with their own funds. It is my understanding that if New Jersey were to choose to reassert its emergency benefits for those who exhaust these Federal benefits, that change would not affect eligibility in New Jersey for these benefits.

Mr. LAUTENBERG. I thank my colleagues for raising and clarifying these questions about the interaction of this much-needed Federal law with New Jersey's own response to the emergency. I too was concerned about the eligibility of New Jersey's unemployed for benefits under this bill, given the State's existing extended benefit program.

I would raise one related question, and ask the distinguished chairman to clarify that our understanding is the same. I am concerned that the Department of Labor may not be able to get this program up and running by September 1, 1991. If there is such an administrative delay, it would mean a gap in benefits for those New Jersey jobless who are currently receiving emergency benefits from the State, because the State program triggers off when the enactment of this Federal law takes effect September 1. The State's law would prevent it from providing further assistance to its jobless from the State fund after September 5. In the unfortunate event that there is such a delay, and New Jersey chooses to continue to pay benefits to those who become eligible for Federal benefits, is it the chairman's understanding that the State fund would be reimbursed for any payments made during the administrative delay? I do not want to see families that have already lost benefits once face another gap in benefits before the Federal program gets going.

Mr. BENTSEN. I appreciate my colleague's concern. It would certainly be my hope that there is no administrative delay in responding to this emergency. We chose September 5 as a date that should give the Department of Labor enough time to get going. But in the event that the funds do not flow by that point, it is my understanding that the State of New Jersey will be reimbursed if it has entered into an agreement with the Secretary of Labor by September 1, 1991 to participate in the Emergency Unemployment Compensation Program. We have been advised by the Labor Department that if such an agreement is in effect by that time, New Jersey will be fully reimbursed for the State extended unemployment benefits it pays to unemployed workers after that date.

I thank my colleagues from New Jersey for helping us understand and clarify the implications of this law for the long-term unemployed of that State.

Mr. SASSER. Mr. President, I stand with the distinguished chairman of the Finance Committee today in support of a temporary emergency repair for our unemployment insurance system—a system that simply no longer provides American working families with the protections they deserve.

Despite what we have heard about the end of the recession—the light at the end of the tunnel—for the 5 million Americans who should normally be getting extended insurance, the tunnel is only getting longer and darker.

Go out into the country and talk to the people who run the small businesses, talk to the people who are trying to get jobs, talk to the skilled workers who have rarely been idle a day in their lives, and they will tell you that this recession continues to cause real hardship. It continues to inflict very real human misery.

In virtually every State, from Maine to Oregon, unemployment lines wrap around waiting rooms and overflow into hallways.

Some 11 million Americans have filed an initial unemployment insurance

claim since the start of this recession. These are hard working, productive Americans who are humbled and frightened by their loss of jobs and income. Many have never been without work before.

These working Americans paid their taxes, paid into the unemployment system. They want to work. They need their unemployment benefits to help them bridge that frightening gap between job and job.

These men and women can't wait for the next election or the next recession to get the protection that's been part of this country's social contract since 1935.

But as they feel themselves falling and glance down at the safety net that's supposed to catch them, they see a gaping hole.

Since the recession began more than 2 million Americans have exhausted their unemployment benefits. The Labor Department estimates that another 3 million will get cut off from the unemployment system in the next year.

For the millions of neglected families, it's a demoralizing setback. It means the unraveling of all that they've worked for, postponing plans, deferring dreams. The choices they face are unforgiving—sell the home that contains their life savings in order to feed their family; pay a doctor's bill or pay the rent; send one child to college and skimp on the next.

In every other downturn since the Great Depression, this Government has expanded unemployment benefits beyond the initial 26 weeks. Presidents Eisenhower, Kennedy, Nixon, Ford, and even Reagan in 1982, each affirmed this basic principle.

But today, only 25,000 Americans receive extended benefits, a mere 2 percent of those who have been unemployed for more than 26 weeks.

Mr. President, American working families have been suffering through a recession for over a year now. It's not short or shallow. It hasn't been kinder and gentler than other recessions.

Back in February, Secretary of Labor Lynn Martin told the budget committee that the recession was bottoming out and that the unemployment system would not be required to handle long-term joblessness.

Yet, the Labor Department itself now estimates that 3.4 million Americans will exhaust their benefits in fiscal year 1992.

The President's chief economic adviser, Dr. Boskin, has stated the recession is really over, but acknowledges that unemployment may continue to rise.

That's hardly comforting when you remember that unemployment is at the highest level in 5 years—nearly 9 million Americans are out of work.

Federal Reserve Chairman, Dr. Alan Greenspan, recently stated that companies have cut payrolls quite aggressively.

The fact is, the dimensions of this recession are different from past recessions.

In the past, workers could reasonably expect to return to work as soon as economic activity picked up. But we may very well be dealing with a different breed of recession.

According to a Wall Street Journal poll this month, fully 34 percent of corporations said they permanently cut payrolls in the past year.

And the ax continues to fall at our top corporations. IBM announced it will reduce its work force by some 17,000. Unisys said it would drop 10,000 of its 70,000 employees. Du Pont expects to cut several thousand workers. Arco says it will let go 2,700. GM will close an assembly plant in California, eliminating 2,600 jobs. The merger between Chemical Bank and Manufacturers Hanover will hit at least 6,000 people. And the latest bank merger between C&S/Sovran and NCNB will mean terminating at least 9,000 employees.

For many workers, the callback to their old jobs is simply not going to come.

As a result, the job search for the average unemployed American will be more difficult, and will take longer.

The fact is, the structure of this recession and the structure of our unemployment system are completely at odds. This recession demands that benefits be available to jobless Americans over a longer term, but the current system is unable to deliver them.

For all of those reasons, this is a genuine economic emergency for 5 million Americans and their families, this is an emergency.

There can be little doubt that an expansion of unemployment insurance conforms exactly with the definition of a circumstance requiring an emergency designation under the terms of the 1990 summit agreement.

Far from violating the summit agreement, this proposal employs the flexibility we intentionally wrote into the new law. It is exactly the kind of exception to the system's rigid constraints that we made room for.

At the summit, we deliberately constructed a limited safety valve—a pressure release—that grants budget flexibility in time of crisis.

We went even further. We explicitly considered recession as one of the three circumstances—along with war and natural disasters—that would warrant invoking the emergency option.

In an effort to refine the definition of the emergency safety valve, the Office of Management and Budget has issued its criteria for determining emergencies, and the extended benefit proposal we're considering today satisfies each one. It is essential, sudden, urgent, unforseen, and temporary.

To those who question whether unemployed Americans face an emergency, I would direct you to the States that have been abruptly ejected from the unemployment system—States whose residents have been told that no more extended benefits checks will be coming.

Go to West Virginia, where the unemployment rate nears 10 percent, and tell the hard-pressed families of that rugged State that their unemployment checks are not essential.

Go to Oregon, where the checks have stopped. Tell them their problem is not urgent.

Tell the worker in Michigan that he should have foreseen being unemployed for more than 6 months.

And tell the working families of Maine that when the extended benefits system stops working for them, tell them the loss of that income will not be shocking and sudden.

Those who argue that this is not an emergency and that it violates the summit agreement are simply looking for an excuse to do nothing.

As Senators know, the emergency designation has been used. The fact is, we've used it this year to help people far from our shores. We've used it to aid the Kurds, to help Turkey, and to forgive Egyptian and Polish debt. The administration supported assistance to the Sudan, Ethiopia, Angola, and Bangladesh.

Yet, somehow, unemployed American workers who face desperation because they have run out of unemployment benefits are not considered to be worthy of emergency status.

If you're a foreign national and you've got a crisis on your hands, the U.S. Government snaps to. But if you're an unemployed American with no insurance benefits and nowhere to turn for income, you're told we can't afford to help you.

Mr. President, we must not succumb to the perverse logic that considers an emergency abroad a higher order of need than one right here in the United States.

Let us be clear about what is at stake here—300,000 Americans each month exhaust their regular unemployment benefits.

During the last 300 days, nearly 2 million Americans have lost their jobs, and we've had no legislation from the administration, no deadlines for action, barely an acknowledgement of the recession at all.

Since the Great Depression, a fundamental social contract between our people and our Government has been forged.

During good times, Americans pay part of their earnings into the unemployment insurance system. When the business cycle takes a downturn, the Government steps in and uses this money to help those who bear the brunt of these capricious cyclical swings.

During every recession since the Second World War, this Government, whether Democratic or Republican, has expanded unemployment benefits beyond 26 weeks.

It is time to renew that social contract, to pull together and help American families in desperate need.

Mr. WELLSTONE. Mr. President, I rise in strong support of S. 1554, the Emergency Unemployment Compensation Act of 1991. The bill is designed to help unemployed Americans who have exhausted their unemployment benefits by temporarily extending these benefits for up to 20 weeks. I am a cosponsor of this measure, because I believe it is an important, concrete first step toward enactment of a series of recession relief measures designed to counter the painful effects of the economic downturn which has battered American workers and the economy in recent months.

This measure extends Unemployment Compensation benefits from 4 to 20 weeks past the current 26 weeks allowed, depending on the unemployment level in each State. While we are beginning to see some signs that the current recession has bottomed out, there is still a serious need for congressional intervention to help those who have borne the brunt of this recession—the long-term unemployed.

According to the U.S. Department of Labor, over 3 million workers will exhaust their benefits this year, with an additional 3.4 million exhausting benefits next year. In June of this year alone, the number of unemployed workers climbed to 8.7 million; 2.2. million more than in June last year. The nationwide unemployment rate has risen to 7 percent, the highest in almost 5 years.

Also in June, as in each month of 1991, another 300,000 workers exhausted their 26 weeks of benefits, leaving them in a double bind, without a source of income in the midst of an ever-tightening labor market.

Even though, as some of my colleagues have argued, some economic indicators have shown modest gains, we know that unemployment is a lagging indicator. If past recessions are any indication, workers will continue to exhaust their unemployment benefits even after the recession is technically over. In the last recession, long-term unemployment did not peak until at least 6 months after the recession was over. Enactment of S. 1554 would be consistent with temporary Federal programs that have been enacted in previous recessions.

While this bill addresses temporarily the emergency needs of unemployed American workers, the underlying unemployment insurance system continues to stand in serious need of reform. In fact, during this recession only 40 percent of the unemployed have received unemployment insurance benefits. This system is not working. I urge my colleagues on the Senate Finance Committee to consider seriously proposals for genuine, thorough reform designed to reverse its deterioration.

With almost $8 billion sitting in the Federal extended benefits account, paid by American employers for precisely this purpose, the time to act is now. I would like to congratulate Chairman BENTSEN, Senator RIEGLE, and the other members of the Finance Committee in bringing this bill to the Senate floor so promptly. I hope we can pass the bill today, and enact it into law before more American workers have exhausted their unemployment benefits.

Mr. BAUCUS. Mr. President, I rise today in support of the unemployment compensation bill we are considering today.

This may be the most important bill we will consider this year.

Why? Because too many hardworking Americans aren't.

What's worse, the safety net of unemployment insurance is failing them. They are exhausting their payments. And they still don't have a job.

Mr. President, we may not be able to give every man and woman a job, but we sure need to help them keep their lives and their family together while they look for one.

The newspapers have been filled with stories about how the recession is over. Well, that might be true to the economists at the Federal Reserve or the stock brokers on Wall Street. But unfortunately, the recession is still all too real for thousands of Americans who can't find a job, or can't get their job back after a layoff.

That is why this bipartisan proposal is so badly needed now.

This needed legislation was introduced by the distinguished chairman of the Finance Committee, Senator BENTSEN. We approved it last week in the Committee by a bipartisan vote of 15 to 4.

Senator BENTSEN's bill will ease the burden on those thousands of Americans who have been out of work, and remain out of work, during this recession.

While the recession may have officially ended, it is not a stunning victory. Economic growth last quarter was an anemic four-tenths of 1 percent. Even so, the national unemployment rate rose to 7 percent last month.

In my own State of Montana, we are a little more fortunate. The unemployment rate in June was 6.4 percent. But there are still workers who have lost jobs and who have run out of unemployment benefits. This bill will help them.

This bill sets up an emergency unemployment compensation program to provide additional assistance to long-term unemployed workers whose regular benefits have run out.

This is not a handout, Mr. President. These are benefits that people earn. They're a short-term fix, to give people a chance to find a job, to give them and their families some security during this harrowing experience.

Losing a job is traumatic. Not finding another is worse. And when you're about to lose your unemployment benefits, it's a real emergency.

You fear losing your car. You fear losing your house. Most of all, you fear losing your self respect.

This bill will be a short-term help for the young unemployed father who has a family depending on him for food and housing and clothing, while he looks for work.

This bill will help, for a few weeks, the woman supporting a family on her own who has lost her job and has no other source of income.

Mr. President, those are emergencies as real as any this Nation might face. And behind each emergency there are real people who are suffering.

I have talked to many Montanans in recent months, and I know that many people still face hard times. They aren't only worried about how to pay for their child's college education or how to buy a new car; they are worried about how to pay for their family's next meal and how to make sure there is a bed for their children to sleep in.

That is why I hope that President Bush will recognize that the plight of the unemployed in this Nation is as important as the plight of the Kurdish refugees. The President should join us in helping those still feeling the impact of an economic recession.

Of course, there is a cost to this, just as there was a cost to our aid to the Kurds. But both are emergencies and the budget should treat them as such.

We shouldn't have one threshold for foreign emergencies—which says you don't have to offset the cost—and another standards for the unemployed in this country—which says you don't get benefits unless some other program is cut.

We have a trust fund to pay unemployment benefits. But it is a cruel irony that while unemployment is increasing, the trust fund is running a surplus. The money in that trust fund must be used to help people in need.

Americans deserve equitable treatment, especially those who are out of a job. This bill does that.

Mr. President, I ask unanimous consent that I be added as a cosponsor to S. 1554, and I urge my colleagues to support it.

Mr. LAUTENBERG. Mr. President, I rise in support of S. 1554, the Emergency Unemployment Compensation Act of 1991. I commend the chairman and ranking member of the Finance Committee for their leadership in addressing the pressing problem of unemployment in our Nation.

My State has already recognized the hardship that this recession has cre-

ated for families and the need for an extended benefit program. People who now exhaust their unemployment benefits are eligible for an additional 6½ weeks of benefits. Those New Jerseyans who have exhausted the regular and extended State benefits will be eligible for another 7 weeks.

Mr. President, the current recession has forced millions of Americans out of work in what the administration promised would be brief economic downturn. People in this country are suffering. Nearly 9 million people are out of work in our country. This is an increase of more than 2 million in the past 2 years. In my State, 269,000 people are unemployed.

The Unemployment Insurance Program was created as part of the original Social Security Act of 1935. The unemployment insurance system was designed to help American workers who lose their jobs. The intent of the program was to provide minimal assistance only to people who were actively seeking work.

Later, the Federal Government established an extended benefit program to provide assistance during prolonged recessions. This program, however, has only triggered on in 3 States despite the fact that 38 States have unemployment rates in excess of 6 percent. This program is clearly not providing assistance to the long-term unemployed who need it and the Congress needs to take this emergency action to remedy this situation.

Currently, over 12,000 New Jersey residents are exhausting their unemployment benefits each month. While the need for relief for these people has grown, so has the surplus in the unemployment insurance trust fund. This makes no sense.

The trust fund moneys are there for these people. The administration wants to hoard this money that was collected for just the kind of emergency unemployed workers face today.

It is time the Federal Government took action to provide needy families with minimal assistance for food and shelter. Without this emergency unemployment compensation bill, millions more Americans will exhaust their unemployment benefits and force more and more families into poverty.

I urge my colleagues to support passage of this bill.

Mr. PELL. Mr. President, although recent economic reports raise some hope that our national economic recession may be ending, there is no end in sight to the misery and heartache suffered by millions of jobless Americans. And the administration's hopeful prediction of an economic recovery has no real meaning for nearly 3 million Americans who are not only jobless but have totally exhausted their unemployment benefits.

Even if the national economy now begins a modest recovery, it is projected that the number of jobless who have exhausted all unemployment payments will continue to increase through the next year, to more than 3 million.

Given these facts, I believe an extension of unemployment compensation payments is essential. It makes economic sense and it is required by our sense of fairness and compassion.

Indeed, it is difficult to understand how the Bush administration can continue to oppose giving a few more weeks of subsistence payments to those who have been jobless the longest and who have suffered the most.

In my view it simply will not do to tell these jobless Americans that the economy is turning around and if they wait for another 6 months, or another year, there may be jobs available.

The Congress should promptly enact an extension of jobless pay and for that reason I strongly support the proposal now pending in the Senate, to provide up to 20 weeks of additional jobless pay for areas like my own State of Rhode Island that have been hardest hit by the economic recession.

The latest economic report is that the economy grew in the last 3 months at a rate of four-tenths of 1 percent, and in testimony last week before the Joint Economic Committee, Michael Boskin, Chairman of the Council of Economic Advisers, said he expects the national economy to continue its modest recovery.

I hope that Chairman Boskin's prediction and the Commerce Department economic indicators prove to be correct and that we are on the road to recovery. But a hope, a promise, and a prediction of better times does not put bread on the table for the jobless and their families who must somehow survive until the economy revives.

It must be noted also that a modest national economic recovery may well bring little relief or much-delayed relief to areas like that Northeast that have suffered most from the recession.

Last month the jobless rate in Rhode Island increased to 8 percent, while the national rate inched up to 7 percent. And within Rhode Island, individual communities have been hit even harder, and have been designated as official labor surplus areas by the U.S. Department of Labor. These include the city of Woonsocket with a jobless rate of 10.3 percent, the town of Tiverton, 12 percent, the city of Pawtucket, 8.8 percent, the city of Central Falls, 8.6 percent, and the towns of Bristol, 9 percent, Little Compton, 9.6 percent, and West Warwick, 8.4 percent.

I have been closely tracking Rhode Island's unemployment figures since they started their steady climb at the end of the 1980's. I am not an economist, but I know that unemployment figures are a pretty fair way of gauging the human toll of an economic downturn.

When we hear about statistics surrounding the gross national product and new housing starts we understand that these figures give us some indication of what is happening to our economy.

But when you look at unemployment figures, you know right away that we are talking about jobs. A job is the simplest economic concept I know. If you don't have a job, you cannot buy food, pay rent, or purchase any other type of goods and services that keep our economy going. Most economists today are agreed that consumers must provide the impetus from a recovery from this recession. If you don't have a job you cannot make ends meet without some type of help, and you certainly are in no position to help lead the way out of the recession.

With continued high unemployment, the extension of unemployment benefits is absolutely necessary to meet the day-to-day needs of a growing number of unemployed workers in many States. I urge prompt Senate approval of the legislation to extend jobless benefits, and I urge the administration to reconsider its position, to stop waving threats of a Presidential veto, and to join the Congress in extending a helping hand to jobless Americans.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 1554), as amended, was passed, as follows:

S. 1554

*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 "Emergency Unemployment Compensation Act of 1991".

**SEC. 2. FEDERAL-STATE AGREEMENTS.**

(a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this Act with the Secretary of Labor (hereafter in this Act referred to as the "Secretary"). Any State which is a party to an agreement under this Act may, upon providing 30 days written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF AGREEMENT.—Any agreement under subsection (a) shall provide that the State agency of the State will make payments of emergency unemployment compensation—

(1) to individuals who—

(A) have exhausted all rights to regular compensation under the State law;

(B) have no rights to compensation (including both regular compensation and extended compensation) with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law (and are not paid or entitled to be paid any additional compensation under any State or Federal law); and

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(2) for any week of unemployment which begins in the individual's period of eligibility (as defined in section 7(2)).

(c) EXHAUSTION OF BENEFITS.—For purposes of subsection (b)(1)(A), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

(2) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(d) WEEKLY BENEFIT AMOUNT.—For purposes of any agreement under this Act—

(1) the amount of emergency unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependent's allowances) payable to such individual during such individual's benefit year under the State law for a week of total unemployment;

(2) the terms and conditions of the State law which apply to claims for extended compensation and to the payment thereof shall apply to claims for emergency unemployment compensation and the payment thereof, except where inconsistent with the provisions of this Act, or with the regulations or operating instructions of the Secretary promulgated to carry out this Act; and

(3) the maximum amount of emergency unemployment compensation payable to any individual for whom an account is established under section 3 shall not exceed the amount established in such account for such individual.

(e) ELECTION.—Notwithstanding any other provision of Federal law (and if State law permits), the Governor of a State in a 7-percent period or an 8-percent period, as defined in section 3(c), is authorized to and may elect to trigger off an extended compensation period in order to provide payment of emergency unemployment compensation to individuals who have exhausted their rights to regular compensation under State law.

**SEC. 3. EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT.**

(a) IN GENERAL.—Any agreement under this Act shall provide that the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment compensation account with respect to such individual's benefit year.

(b) AMOUNT IN ACCOUNT.—

(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

(A) 100 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which the individual most recently received regular compensation, or

(B) the applicable limit times the individual's average weekly benefit amount for the benefit year.

(2) APPLICABLE LIMIT.—For purposes of this section—

(A) IN GENERAL.—Except as provided in this paragraph, the applicable limit shall be determined under the following table:

| In the case of weeks beginning during a: | The applicable limit is: |
|---|---|
| 8-percent period ..... | 20 |
| 7-percent period ..... | 13 |
| 6-percent period ..... | 7 |
| Other period ..... | 4. |

(B) APPLICABLE LIMIT NOT REDUCED.—An individual's applicable limit for any week shall in no event be less than the highest applicable limit in effect for any prior week for which emergency unemployment compensation was payable to the individual from the account involved.

(C) INCREASE IN APPLICABLE LIMIT.—If the applicable limit in effect for any week is higher than the applicable limit for any prior week, the applicable limit shall be the higher applicable limit, reduced (but not below zero) by the number of prior weeks for which emergency unemployment compensation was paid to the individual from the account involved.

(3) REDUCTION FOR EXTENDED BENEFITS.—The amount in an account under paragraph (1) shall be reduced (but not below zero) by the aggregate amount of extended compensation (if any) received by such individual relating to the same benefit year under the Federal-State Extended Unemployment Compensation Act of 1970.

(4) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

(c) DETERMINATION OF PERIODS.—

(1) IN GENERAL.—For purposes of this section, the terms "8-percent period", "7-percent period", "6-percent period", and "other period" mean, with respect to any State, the period which—

(A) begins with the second Sunday of the month after the first month during which the applicable trigger for such period is on, and

(B) ends with the Saturday immediately preceding the second Sunday of the month after the first month during which the applicable trigger for such period is off.

(2) APPLICABLE TRIGGER.—In the case of an 8-percent period, 7-percent period, 6-percent period, or other period, as the case may be, the applicable trigger is on for any week with respect to any such period if the average rate of total unemployment in the State for the period consisting of the most recent 6-calendar month period for which data are available—

(A) equals or exceeds 6 percent, and

(B) falls within the applicable range (as defined in paragraph (3)).

Subparagraph (A) shall only apply in the case of an 8-percent period, 7-percent period, or 6-percent period.

(3) APPLICABLE RANGE.—For purposes of this subsection, the applicable range is as follows:

| In the case of a: | The applicable range is: |
|---|---|
| 8-percent period ..... | A rate equal to or exceeding 8 percent. |
| 7-percent period ..... | A rate equal to or exceeding 7 percent but less than 8 percent. |
| 6-percent period ..... | A rate equal to or exceeding 6 percent but less than 7 percent. |
| Other period ..... | A rate less than 6 percent. |

(4) SPECIAL RULES FOR DETERMINING PERIODS.—

(A) MINIMUM PERIOD.—Except as provided in subparagraph (B), if for any week beginning after August 31, 1991, an 8-percent period, 7-percent period, 6-percent period, or other period, as the case may be, is triggered on with respect to such State, such period shall last for not less than 13 weeks.

(B) EXCEPTION IF APPLICABLE RANGE INCREASES.—If, but for subparagraph (A), another period with a higher applicable range would be in effect for such State, such other period shall take effect without regard to subparagraph (A).

(5) NOTIFICATION BY SECRETARY.—When a determination has been made that an 8-percent period, 7-percent period, 6-percent period, or other period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no emergency unemployment compensation shall be payable to any individual under this Act for any week—

(A) beginning before the later of—

(i) September 1, 1991, or

(ii) the first week following the week in which an agreement under this Act is entered into, or

(B) beginning after July 4, 1992.

(2) TRANSITION.—In the case of an individual who is receiving emergency unemployment compensation for a week which includes July 4, 1992, such compensation shall continue to be payable to such individual in accordance with subsection (b) for any week beginning in a period of consecutive weeks for each of which the individual meets the eligibility requirements of this Act.

(3) REACHBACK PROVISIONS.—(A) IN GENERAL.—If—

(i) any individual exhausted such individual's rights to regular compensation (or extended compensation) under the State law after March 31, 1991, and before the first week following August 31, 1991 (or, if later, the week following the week in which the agreement under this Act is entered into), and

(ii) a period described in subsection (c)(2)(A) is in effect with respect to the State for the first week following August 31, 1991, such individual shall be entitled to emergency unemployment compensation under this Act in the same manner as if such individual's benefit year ended no earlier than the last day of such following week.

(B) LIMITATION OF BENEFITS.—In the case of an individual who has exhausted such individual's rights to both regular and extended compensation, any emergency unemployment compensation payable under subparagraph (A) shall be reduced in accordance with subsection (b)(3).

**SEC. 4. PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF EMERGENCY UNEMPLOYMENT COMPENSATION.**

(a) GENERAL RULE.—There shall be paid to each State which has entered into an agreement under this Act an amount equal to 100 percent of the emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

(b) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this Act or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to re-

imbursement under this Act in respect of such compensation.

(c) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this Act shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this Act for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

**SEC. 5. FINANCING PROVISIONS.**

(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this Act.

(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this Act. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as established by section 905 of the Social Security Act) to the account of such State in the Unemployment Trust Fund.

(c) ASSISTANCE TO STATES.—There are hereby authorized to be appropriated without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act) in meeting the costs of administration of agreements under this Act.

**SEC. 6. FRAUD AND OVERPAYMENTS.**

(a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of emergency unemployment compensation under this Act to which he was not entitled, such individual—

(1) shall be ineligible for further emergency unemployment compensation under this Act in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

(b) REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment compensation under this Act to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(1) the payment of such emergency unemployment compensation was without fault on the part of any such individual, and

(2) such repayment would be contrary to equity and good conscience.

(c) RECOVERY BY STATE AGENCY.—

(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any emergency unemployment compensation payable to such individual under this Act or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the emergency unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

**SEC. 7. DEFINITIONS.**

For purposes of this Act:

(1) IN GENERAL.—The terms "compensation", "regular compensation", "extended compensation", "additional compensation", "benefit year", "base period", "State", "State agency", "State law", and "week" have the meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

(2) ELIGIBILITY PERIOD.—An individual's eligibility period shall consist of the weeks in the individual's benefit year which begin in an 8-percent period, 7-percent period, 6-percent period, or other period under this Act and, if the individual's benefit year ends on or after August 31, 1991, any weeks thereafter which begin in any such period. In no event shall an individual's period of eligibility include any weeks after the 39th week after the end of the benefit year for which the individual exhausted his rights to regular compensation or extended compensation.

(3) RATE OF TOTAL UNEMPLOYMENT.—The term "rate of total unemployment" means the average unadjusted total rate of unemployment (as determined by the Secretary) for a State for the period consisting of the most recent 6-calendar month period for which data are available.

**SEC. 8. PAYMENTS OF UNEMPLOYMENT COMPENSATION TO FORMER MEMBERS OF THE ARMED FORCES.**

(a) REPEAL OF CERTAIN LIMITATIONS.—Subsection (c) of section 8521 of title 5, United States Code, is hereby repealed.

(b) REDUCTION IN LENGTH OF REQUIRED ACTIVE DUTY BY RESERVES.—Paragraph (1) of section 8521(a) of such title 5 is amended by striking "180 days" and inserting "90 days".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to weeks of unemployment beginning on or after the date of the enactment of this Act.

**SEC. 9. ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION.**

Section 908 of the Social Security Act is amended to read as follows:

"ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION

"SEC. 908. (a) ESTABLISHMENT.—Not later than February 1, 1992, and every 4th year thereafter (but not before February 1 of such 4th year), the Secretary of Labor shall establish an advisory council to be known as the Advisory Council on Unemployment Compensation (referred to in this section as the 'Council').

"(b) FUNCTION.—It shall be the function of each Council to evaluate the unemployment compensation program, including the purpose, goals, countercyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and any other aspects of the program and to make recommendations for improvement.

"(c) MEMBERS.—

"(1) IN GENERAL.—Each Council shall consist of 11 members as follows:

"(A) 5 members appointed by the President, to include representatives of business, labor, State government, and the public.

"(B) 3 members appointed by the President pro tempore of the Senate, in consultation with the Chairman and ranking member of the Committee on Finance.

"(C) 3 members appointed by the Speaker of the House, in consultation with the Chairman and ranking member of the Committee on Ways and Means.

"(2) QUALIFICATIONS.—In appointing members under subparagraphs (B) and (C), the President pro tempore of the Senate and the Speaker of the House shall each appoint—

"(A) 1 representative of the interests of business,

"(B) 1 representative of the interests of labor, and

"(C) 1 representative of the interests of State governments.

"(3) VACANCIES.—A vacancy in any Council shall be filled in the manner in which the original appointment was made.

"(4) CHAIRMAN.—The President shall appoint the Chairman.

"(d) STAFF AND OTHER ASSISTANCE.—

"(1) IN GENERAL.—Each council may engage any technical assistance (including actuarial services) required by the Council to carry out its functions under this section.

"(2) ASSISTANCE FROM SECRETARY OF LABOR.—The Secretary of Labor shall provide each Council with any staff, office facilities, and other assistance, and any data prepared by the Department of Labor, required by the Council to carry out its functions under this section.

"(e) COMPENSATION.—Each member of any Council—

"(1) shall be entitled to receive compensation at the rate of pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the actual performance of duties vested in the Council, and

"(2) while engaged in the performance of such duties away from such member's home or regular place of business, shall be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

"(f) REPORT.—

"(1) IN GENERAL.—Not later than February 1 of the second year following the year in which any Council is required to be established under subsection (a), the Council shall submit to the President and the Congress a report setting forth the findings and recommendations of the Council as a result of its evaluation of the unemployment compensation program under this section.

"(2) REPORT OF FIRST COUNCIL.—The Council shall include in its February 1, 1994, re-

port findings and recommendations with respect to determining eligibility for extended unemployment benefits on the basis of unemployment statistics for regions, States, or subdivisions of States.".

SEC. 10. EMERGENCY DESIGNATION.

(a) EMERGENCY DESIGNATION.—Pursuant to sections 251(b)(2)(D)(i) and 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Congress hereby designates all direct spending amounts provided by this Act (for all fiscal years) and all appropriations authorized by this Act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EFFECTIVENESS.—Notwithstanding any other provision of law or any other provision of this Act, none of the preceding sections of this Act shall take effect unless, not later than the date of the enactment of this Act, the President submits to the Congress a written designation of all direct spending amounts provided by this Act (for all fiscal years) and all appropriations authorized by this Act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

Mr. DOLE. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1992 AND 1993

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. COHEN. Mr. President, may I inquire as to what the pending business is?

The PRESIDING OFFICER. S. 1507 is the pending business.

Mr. COHEN. Mr. President, I would like to take this opportunity to explain some of the changes that the Armed Services Committee has made with reference to the Base Closure Act.

I see the Senator from Louisiana on his feet. Does he wish to be recognized?

Mr. JOHNSTON. Mr. President, will the Senator yield.

Mr. COHEN. I will yield without losing my right to the floor.

Mr. JOHNSTON. Mr. President, Senator BREAUX and I, and I believe Senator ROTH, have an amendment with respect to base closures which we were prepared to offer at this time if it is the pleasure of the committee.

Mr. COHEN. Could I inquire of the chairman whether the proposed amendment is one that is going to be accepted?

Mr. NUNN. If I could speak to that, I have not seen the final amendment and I am awaiting that because my staff has been working with the staff of the Senator from Louisiana. But this has not been cleared on both sides.

Mr. COHEN. In that case, Mr. President, I would like to proceed for a few moments to explain some of the changes the committee recommended and the rationale for those changes. In the meantime, the Senator from Louisiana might discuss the amendment with the chairman and ranking member.

Mr. NUNN. It is my view that I will support the Johnston amendment, but I believe that there will be opposition to the Johnston amendment. Whether it will require a rollcall, I do not know. How long does the Senator wish to speak?

Mr. COHEN. I expect to speak no longer than 5 or 6 minutes.

Mr. President, I would like to call to my colleagues' attention pages 340 and 341 of the Armed Services committee report.

Mr. President, on page 340, beginning with paragraphs 3, 4, 5, and 6, are the key changes that have been made to the legislation that currently is on the books. I would like to speak generally to this particular subject.

I think everybody recognizes that we are experiencing a drawdown in force structure and that we are going to have to have a number of bases closed. All of us expect to bear a fair share of that particular burden, but we also expect fairness in the process.

I do not believe the Members of this body should accept any recommendation from the Department of Defense unless there is an inherent sense of fairness at the core of this process. Some of us have been through this experience. I will speak only for the State of Maine, in which I believe fairness was not extended, and to one base in particular, Loring Air Force Base. I want to explain why we made some recommendations that are contained on pages 340 and 341.

I will not spend the time now, but you can see for yourselves that we tried to make the staff of the Commission much more independent than it currently is.

I pass instead to some of the key elements under 5 and 6. Let me turn to 6 first.

6. A key element to public support for the base closure process is the prompt disclosure to the Commission, GAO, and Congress of all information used by the Department in making its recommendations, including information about installations not on the list used for comparative purposes. The legislation would expressly set forth the Department's obligation to respond to any request from Congress, including a request from a committee or a Member of Congress, for any such information. Similarly, the legislation would encourage communications with the Defense Base Closure and Realignment Commission by expanding the applicability of prohibitions against interference with communications by members of the armed forces contained in section 1034 of title 10, United States.

Let me give you a brief explanation as to the reason for this change. I might say that, of course, the entire base closure and realignment recommendation is not before the body. It will not be brought before the Senate until sometime in September. We hope to have a much fuller debate about the equity of the process at that time.

But I would like to give you an example of what took place at Loring AFB and what can take place with other Members who will face a similar circumstance in years to come, and that is the issue of stonewalling.

On May 9 of this year, I wrote to the Secretary of the Air Force and requested information that had been communicated from Loring Air Force Base officials to SAC Headquarters. I wrote on May 9. I did not get a response and, frankly, no response was directed to me for this information until June 3.

At that time, members of the Base Closure Commission traveled to Loring Air Force Base, and a member of the Commission had to specifically request the information from Loring Air Force Base officials. The information could only be turned over to the Commission member.

I find it completely objectionable that we would ever find ourselves in a situation where the Department of Defense would refuse a request for information by a Member of Congress. I think that is intolerable.

As a result of that delay, we lost nearly 3 weeks in finding out what the facts were. And, as you know, under the base closure procedures, there is a very short timeframe in which you, as Members representing your States, have an opportunity to gather information to present the best, most effective case you possibly can.

We lost over 26 days through the sheer stonewalling on the part of the Air Force. They would not turn the information over. As a matter of fact, the Maine delegation, in conjunction with the Governor of Maine, ended up having to turn to a Freedom of Information Act procedure in the Federal courts. That is simply not a tolerable situation, and that is one of the reasons for the change that I just referred to as number 6.

In addition to the stonewalling that took place, the Air Force actually imposed a gag rule. We were trying to get information from local base officials that they had submitted to Strategic Air Command Headquarters, and they were instructed not to talk to us.

It is my understanding that that in itself, the imposition of a gag rule, is against the law as it currently stands. Notwithstanding that, the Air Force officials at Loring were prohibited from discussing this with me or any member of my staff. So I was not able to acquire information in order to represent my constituents in Maine.

In addition, if you will look on number 5, there has been a significant change here. I want to read it and call it to the attention of my colleagues.

To underscore the importance of base closure and realignment information submitted to the Secretary of Defense or to the Commission, the legislation would require persons in a position of responsibility with respect to such submissions to certify the accuracy and completeness of the information. In addition, the legislation would require that the Department, in the presentation of a military construction request, use the same estimates that were used by the Department during the base closure and realignment process for that project. In the event that there are any differences in project cost estimates (other than adjustments for inflation), the Department would be required to explain such differences in the budget justification material. In addition, the DOD Inspector General would investigate any project involving a significant difference between the estimates submitted to the Commission and the estimates in the budget request, to determine the reasons for the differences, including a determination as to whether any of the information submitted to the Commission was inaccurate, incomplete, or misleading in any material respect.

Let me explain quickly what I mean by that. Senator MITCHELL and I were attempting to determine exactly what was involved in terms of cost savings that the Air Force concluded would be achieved by the closure of Loring Air Force Base. We found, for example, that the local base officials, the engineers, the ones who are responsible for submitting that information to SAC Headquarters, had estimated it would cost approximately $1 million to upgrade the roads to code level one.

That $1 million figure went through the process at SAC Headquarters, and came back at nearly $34 million. No explanation was given.

Three base commissioners traveled to Loring and saw the roads firsthand, and they could not understand how it would cost $33 million additional to upgrade the roads. We never received a satisfactory explanation.

We found, for example, that while local base officials had requested $80,000 or $90,000 to tear down a dilapidated building, that by the time that $90,000 figure came back through SAC Headquarters, it was $18 million because SAC Headquarters decided that that building should be replaced, even though there were no plans to ever replace it.

Going through this entire process, we found that while the local base officials had submitted data that would indicate that only $26 million was required to bring all of the facilities up to code level one, the Air Force decided initially it would cost $118 million. And when we asked for verification of this number, the Air Force decided to reward our inquiry by increasing the figure to $144 million. All again without any explanation.

In fact, we could not get an explanation for the justification of those costs until a day after—the day after—the Commission made its final recommendation. We finally were able to achieve the rationale of the Air Force at that time.

Let me give you one final example of why I believe, if we are going to have any support for this kind of procedure, that we have to have truth in disclosure.

We have a brandnew hospital at Loring Air Force Base. I think the taxpayers paid something in the neighborhood of $24 million, including the equipment. It is a really, truly fine hospital. It is code green, level 1 facility. It does not require a cent to upgrade it.

A similar request went out to a number of different SAC bases, all of the bases, for estimates in terms of what it would cost to upgrade their medical facilities. I want to read something to my colleagues.

At Barksdale Air Force Base, the official said it would take $14.7 million to upgrade their hospital facilities to code level 1. It came back through SAC headquarters, $.15 million, not $14 million.

Beale Air Force Base said $15 million was required; SAC said $.27 million—$270,000 dollars.

Ellsworth Air Force Base, $3.1 million. It came back through SAC headquarters, $70,000. The list goes on in this fashion.

I would say it was a total distortion. Let me make it very clear. I think the figures have been distorted. I think they have been manipulated. I do not believe we have received an accurate assessment by any stretch of anyone's imagination in terms of what the actual costs are.

The committee is going to hold the Department of Defense to its figures. If they are going to submit numbers, as they did in this particular case, which I believe were manipulated and shaded in a way to achieve a preconceived decision, then we are going to hold the Department of Defense in future years to those numbers.

In the future, if a base needs to be upgraded, we are going to hold the Defense Department to the figure, let us say, for Beale Air Force Base. If Beale says it needed $15 million, but the Air Force said only $.27 million, $270,000; $270,000 is the figure we are going to hold the Defense Department to. The Air Force is going to have to justify exactly why it needs $15 million in future years.

I just want to take this moment to call to the attention of my colleagues the fact that we think we have strengthened the Base Closure Commission process. I hope none of my colleagues will have to go through what we went through in the State of Maine under this procedure. I hope, in the future, we will have a much clearer, fairer, and more careful explanation of what the Defense Department is recommending.

If we cannot rely upon the truth and accuracy and fairness of the processes, then we ought to reject outright any recommendation coming from the Department of Defense. I will have much more to say about this process later when we return from the August recess.

I thank my colleagues for their patience and yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

AMENDMENT NO. 1021

(Purpose: To require the heads of departments and agencies of the Federal Government to disclose information concerning United States personnel classified as prisoners of war or missing in action)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself, Mr. BRYAN, Mr. DOLE, Mr. NUNN, Mr. BIDEN, Mr. BRADLEY, Mr. CONRAD, Mr. DODD, Mr. JEFFORDS, Mr. GARN, Mrs. KASSEBAUM, Mr. LEVIN, Mr. GORE, Mr. RIEGLE, Mr. ROBB, Mr. BOREN, Ms. MIKULSKI, Mr. COHEN, Mr. LIEBERMAN, Mr. MCCONNELL, Mr. REID, and Mr. SHELBY, proposes an amendment numbered 1021.

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

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

The amendment is as follows:

On page 297, between lines 18 and 19, insert the following:

SEC. 1125. DISCLOSURE OF INFORMATION CONCERNING UNITED STATES PERSONNEL CLASSIFIED AS PRISONER OF WAR OR MISSING IN ACTION.

(a) IN GENERAL—(1) Except as provided in subsection (c), the head of each department or agency of the Federal Government holding or receiving any information referred to in paragraph (2) relating to any United States personnel currently classified as prisoners of war or missing in action shall make such informtion available to the public.

(2) Paragraph (1) applies to any record, live-sighting report, or other information relating to the location, treatment, or condition of any person referred to in such paragraph on or after the date on which such person passed from control of the Armed Forces of the United States into a status ultimately classified as prisoner of war or missing in action, as the case may be.

(b) DEPARTMENT OF DEFENSE INFORMATION.—At the same time that the Secretary of Defense makes available to the public the records and other information that is subject to the deadline established by subsection (d)(1), the Secretary shall also make available to the public a complete list of United States personnel classified as prisoners of war, missing in action, or killed in action (body not returned) after 1940, including during a period of war. The list shall include—

(1) the current classification of each listed person for Department of Defense purposes; and

(2) each change that has occurred in the listed person's classification (for Department of Defense purposes) since the original classification.

(c) EXCEPTIONS TO DISCLOSURE REQUIREMENT.—(1) A record or other information, in-

cluding any fatality report, may not be made available to the public pursuant to subsection (a) if—

(A) such record or other information is exempt from the disclosure requirements of section 552 of title 5, United States Code, by reason of subsection (b) of such section;

(B) the record or other information is in a system of records exempt from the requirements of subsection (d) of section 552a of such title pursuant to subsection (j) or (k) of such section; or

(C) the record or other information specifically mentions a person by name unless such person or, in the case of a dead or incapacitated person or a person whose whereabouts is unknown, the closest living relative of such person (as determined by the official custodian of such record or information) expressly consents in writing to the disclosure of such record or other information.

(2) The prohibition contained in paragraph (1)(C) does not apply to the access of a member of the family of a person to any record or information to the extent that the record or other information relates to such person.

(3) The authority of a person to consent to disclosure of a record or other information for the purposes of paragraph (1)(C) may be delegated to another person or an organization only by means of an express legal power of attorney granted by the person authorized by such paragraph to consent to the disclosure.

(d) DEADLINES.—(1) In the case of records or other information that are required by subsection (a) to be made available to the public and are held by a department or agency of the Federal Government on the date of the enactment of this Act, the head of such department or agency shall make such records and other information available to the public pursuant to this section not later than 1 year after such date.

(2) Whenever after the date of the enactment of this Act a department or agency of the Federal Government receives any record or other information referred to in subsection (a) that is required by this section to be made available to the public, the head of such department or agency shall make such record or other information available to the public pursuant to this section not later than 1 year after it is received by that department or agency.

(3) If the head of a department or agency determines that his disclosure of any record or other information referred to in subsection (a) by the date required by paragraph (1) or (2) will compromise the safety of United States personnel known or thought to be held as prisoners of war, then the head of such department or agency may withhold such record or other information from the disclosure otherwise required by this section and shall immediately notify the President and the congressional intelligence committees of that determination.

(e) DEFINITIONS.—In this section:

(1) The term "period of war" has the meaning given such term in section 101(11) of title 38, United States Code.

(2) The term "congressional intelligence committees" means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. I ask unanimous consent Senators DOLE, NUNN, BIDEN, BRADLEY, CONRAD, DODD, JEFFORDS, GARN, KASSEBAUM, COHEN, LIEBERMAN, MCCONNELL, REID, and SHELBY be listed as cosponsors to the amendment.

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

PRIVILEGE OF THE FLOOR—S. 1507

Mr. ROTH. Mr. President, I ask unanimous consent during the consideration of S. 1507, Marvin Doyal be accorded the privilege of the floor.

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

Mr. MCCAIN. Mr. President, this amendment requires Federal agencies to make public a list of all Americans still classified as POW or MIA, and to fully disclose all information pertaining to POW/MIA's within 1 year of enactment subject to certain national security and privacy waivers.

Mr. President, I wish to begin by recognizing the support and coauthorship of my friend from Nevada, Senator BRYAN who joins me in offering this amendment. His commitment to securing the fullest possible accounting of Americans missing-in-action and prisoners-of-war is second to none. His commitment was evident in his sponsorship of S. 1127, a bill which seeks to achieve the same goals as this amendment does. The amendment we are offering today is based on the provisions of his bill and on a similar bill, S. 1270, which I introduced last month. Earlier this month, we decided to combine our efforts, and this amendment represents the fruit of our cooperation. I commend Senator BRYAN for his devotion to American POW/MIA's and their families, and I thank him for his valued counsel and support.

Mr. President, this amendment directs government agencies to disclose to the public information concerning the fate of Americans still classified as prisoner-of-war or missing-in-action.

I have given much consideration to this subject in recent years. Indeed, I have been reluctant to support similar legislation requiring disclosure introduced in the last Congress. While I appreciated the goals of the sponsors of that earlier legislation, I was concerned that the bill would have unintended and unwanted consequences. I was concerned that adoption of the legislation could threaten the safety of POW/MIA's who are alive, jeopardize the security of U.S. intelligence operations, compromise our foreign intelligence sources, violate the privacy of the families of POW/MIA's, and place too great a burden on the limited resources of the POW/MIA office within the Defense Intelligence Agency.

However, it has become increasingly apparent to me, and I am certain to all Senators, that the public trust and confidence in the integrity of our Government's efforts to resolve the questions surrounding the fate of American POW/MIAs is waning—very severely waning. The process by which we seek information on our POW's and MIA's has become clouded by doubt and suspicion to the extent that the people involved in the process—many good and honorable people—have had not only their competency, but their integrity called into question.

This problem has become all the more acute since the recent release of photographs which purport to be pictures of American MIA's who have been identified by their families. Even before these photographs were released, however, it had become apparent to Senator BRYAN and me and a good number of our colleagues, that the American people were increasingly questioning the government's determination to resolve the fates of our POWs and MIAs. Accordingly, well before the existence of these photographs became known to us or to the public, Senator BRYAN and I introduced separate bills to provide to the public greater access to information concerning POW/MIA's.

Mr. President, my purpose in introducing this legislation was to encourage the restoration of public confidence in the personnel and policies involved in the investigation of the POW/MIA question, and, if there have been failures or mistakes made in this process, to draw public attention to them as the first step toward correcting them.

To accomplish these ends I was guided by the wise advice of the late, distinguished jurist Learned Hand who wrote.

> The mutual confidence on which all else depends can be maintained only by an open mind and a brave reliance upon free discussion.

However, both Senator BRYAN and I felt very strongly that the public's right to know should and be reconciled with our concerns for the security of our intelligence operations and assets, the safety of any living POW/MIAs, the families' right to privacy and the limited resources of the Defense Intelligence Agency. Indeed, I believe the provisions of this amendment do adequately reconcile these imperatives with the need to encourage greater public secrutiny of this information.

Mr. President, allow me to briefly describe the provisions of this amendment. This amendment directs the heads of departments and agencies of the Federal Government to make available to the public within one year of this legislation's enactment any information relating to Americans still considered a POW or MIA.

A year may strike some as an unnecessarily long period of time to release this information, but I believe it properly accommodates DIA officials who complain that the disclosure of this information will tax the resources of the office and keep them from the important tasks with which they are charged. Those complaints were made to me by no less an authority than Colonel Mike Peck, the former director

of the POW/MIA office in the DIA, whose resignation has occasioned so much controversy.

The Defense Department recently announced that the POW/MIA office of DIA will be provided with additional resources and personnel. With these additional resources, the office will be able to locate, organize and release information within the one year deadline. Let me make clear, I do not believe that all information, including intelligence that is collected after this legislation is enacted, will necessarily require a year to release. I would hope, indeed, I trust, that the Government will not use this generous allocation on time to delay the prompt release of this information. If this were the case, I feel certain Congress would be obliged to revisit this subject.

This amendment also refers to national security waivers in the Freedom of Information Act that ensure that any information which would compromise the integrity of our intelligence or risk the lives of Americans would be exempt from disclosure. Neither, under the provisions of this amendment would any information that specifically mentions a POW or MIA by name be released to the public without the express consent of the closest living relative.

Mr. President, these are important exceptions to the disclosure requirement, but I do not believe that they will pose impediments that are impossible to overcome. If any agency declines to disclose information based on these exemptions, appeal processes are available to review these determinations. And speaking for myself, Mr. President, I do not expect the Government to abuse these waivers. It is difficult to make a credible argument that our intelligence operations would be threatened by the release of information on POW/MIA's from the Second World War, the Korean war or even from a war that ended nearly 20 years ago. However, should these waivers be abused, I and many other members of Congress would be obliged to introduce additional legislation limiting the government's ability to invoke this exception.

Regarding the family privacy exception, I feel that is the minimum respect that Congress and the Government owe to the families of our POW/MIA's. All Americans have a genuine interest in determining the fates of our POW/MIA's. But the public's interest does not supersede the families' interest or their right to privacy. The families will know better than the rest of us what is the best interest of their missing loved ones.

Mr. President, these are, in brief detail, the provisions of the amendment and the reasoning on which they are premised. As I have stated, the need for this legislation was apparent long before the latest increase in public concern generated by the release of several photographs. Certainly, the release of those pictures has driven the point home forcefully to every Member of Congress and to every home in America.

I believe it is fair to state that the agencies which are responsible for this information have not been terribly receptive to previous legislation on this subject. I think it is also fair to state that in light of the growing controversy those agencies now have a better appreciation for the demensions of the crisis in public confidence currently confronting the Government. Indeed, no agency of the Federal Government has raised an objection to my legislation, and I am encouraged by this lack of opposition to believe that the Government understands the importance of public disclosure.

Previously, veterans groups like the Veterans of Foreign Wars have opposed similar legislation. However, I am confident that they too are satisfied that this amendment has reconciled the security and privacy imperatives that I have mentioned with the urgent necessity to get the public more involved in this question. I thank the leadership of both organizations for their encouragement and support for the ends Senator BRYAN and I are seeking today.

What we are seeking today, Mr. President, is to make progress toward resolving the fate of our missing in action and prisoners of war. We will make little progress toward that end while the Government's efforts to find our POW's and MIA's suffer from a rapid decrease in public confidence. The men and women who are responsible for acting on this national priority will not do their job any more effectively while their commitment to their responsibilities is suspect.

Allow me to take a moment to praise again one particular individual whose involvement in resolving this question represents the best—the very best—traditions of public service. Gen. John Vessey, the President's emissary to Vietnam for POW/MIA affairs is one of the finest men to have ever worn the uniform of the U.S. Army. Should recent controversies cause anyone to doubt his integrity or his effectiveness it would constitute, in my opinion, an enormous injustice. If we failed to do all we can to bring home our POW/MIA's it is not for want of Jack Vessey's commitment. Indeed, the more he is involved in this question, the more confident I am that it will be resolved. I would encourage the Government to make even greater use of this honorable man even though he has long since earned a quiet retirement.

My purpose in offering this amendment, Mr. President, is to encourage the American people to understand the efforts undertaken by people like General Vessey. Our efforts to secure our missing servicemen may not have been perfect. They may not have always seemed to represent the Nation's highest priority. But, as I have said many times in the past, this should not be a question that divides us. This should be the one question that unites every single American. This amendment is an attempt to do just that: to involve all Americans in this process, to identify and remedy any deficiencies, and to unite all Americans in what must be our highest national priority.

I believe that the amendment's objectives will be achieved and this information will be desclosed to the public. I would encourage all Americans to use this information wisely. I fully realize that there may be some individuals who will use this information to perpetrate hoaxes on POW/MIA families. We have seen such despicable activity in the past, and I expect to see more in the future. But the public's need to know has overwhelmed this concern. And I hope that this kind of fraud will not dramatically increase in consequence of this information's release. I hope that no American who enjoys access to this information would have reason to complain like the poet, T.S. Eliot:

> Where is the wisdom we have lost in knowledge?
> Where is the knowledge we have lost in information?

Let us not use this information in pointless recriminations of people who have sought to serve their country, even if we are not in every instance satisfied with the fruits of their labor. Let us use this information to seek the truth. Let us use this information to unite the country, to heal the wounds of war, and to bring home those Americans who undertook to serve their country on distant shores and who never came back.

Mr. President, I ask unanimous consent to add Senator WARNER as a cosponsor.

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

Mr. MCCAIN. Mr. President, I am not sure which path we will take now that the POW-MIA issue has become mired in a very public controversy. I am not sure if we are going to have a select committee, which would represent the best and dedicated efforts of my friend from New Hampshire, Mr. SMITH. I am not sure if we are going to have a Presidential commission to which the President would appoint some very credible, experienced, talented and dedicated Americans. I am not sure if we are going to have both. I have told my friend from New Hampshire, that I do not view those two as mutually exclusive. In fact, I think they can complement each other.

I do know, Mr. President, that one of the areas that has caused enormous controversy is the belief on the part of many Americans that information is

being concealed by the Government that concerns the whereabouts of our missing in action and POW's.

Our colleague from Iowa, Senator GRASSLEY, had an enormous amount of difficulty in gaining access to information that he feels, and I believe correctly, he is entitled to, also, our colleague from North Carolina, Senator HELMS. I am sure that my colleague from New Hampshire, Senator SMITH, could talk for a long time about the difficulties he has encountered in trying to uncover the most elemental aspects of some of the outstanding cases of those still listed as missing in action.

Mr. President, I think it is of the utmost importance that whatever we do, whether it be special commissions or select committees, in attempting to resolve this issue, this amendment should be adopted. We can at least begin clearing up this aspect of the lingering tragedy of American's missing sons.

Mr. President, before I yield the floor, I ask unanimous consent that Senator DIXON be added as a cosponsor.

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

Mr. MCCAIN. I yield the floor.

Mr. BRYAN. Mr. President, I rise today to address the McCain/Bryan amendment designed to lift the cloud of secrecy and doubt surrounding the Federal Government's knowledge of the fate of Americans listed as prisoners of war [POW's] or missing in action [MIA's].

This amendment would require the heads of Federal agencies or departments with information regarding U.S. military personnel listed as prisoners of war, missing or killed in action from World War II to the present to disclose that information to the public.

This amendment has the potential to help answer some of the remaining questions regarding these missing patriots.

Moreover, this amendment is crucial to establishing once and for all the credibility of the Federal Government on this issue.

Whether or not they are justified, there are those who suspect that the Federal Government is holding back information.

There are those who suspect that the Federal Government isn't playing it straight with the American people.

This amendment can help eliminate that suspicion.

Mr. President, today there are 2,273 Americans still missing as a result of the conflict in Vietnam, and there are many more from the Korean war and World War II.

We have the opportunity to fulfill a commitment of trust to the families of those missing.

We have an opportunity to demonstrate the depth of our gratitude to those who served their country in the past.

Moreover, we have an opportunity to demonstrate to those who presently serve and those who are considering service, that the American Government will spare no effort to protect their well-being.

We are all deeply concerned whenever American men and women are held against their will in foreign lands.

Indeed, as the President said in his inaugural address:

> There are Americans who are held against their will in foreign lands and Americans who are unaccounted for.
>
> Assistance can be shown here and will be long remembered. Goodwill begets goodwill. Good faith can be a spiral that endlessly moves on. * * *

Members of Congress and the Bush administration have moved internationally to advance the accounting of American veterans whose fate is still unknown.

But domestically, the administration has yet to adopt the policy set forth in this amendment to satisfy the doubts and curiosity of the American people.

The administration has yet to do all it can domestically to give these loved ones peace of mind.

Mr. President, as I mentioned earlier, this amendment requires the release of all pertinent Federal Government information regarding POW/MIA's.

However, we include two important exceptions. The first protects the family of the missing soldier's right to privacy because no information mentioning a serviceman's name could be released against the wishes of the surviving family.

Moreover, the amendment would protect the interests of national security by preventing the disclosure of classified information if the Federal Government can show that national security could be compromised.

The families of those missing have been waiting too long for this simple act of clarity and trust.

It is time to put these doubts to rest.

Mr. NUNN. Mr. President, I believe this is a very good amendment. I am proud to be a cosponsor of the amendment. I think it responds to a growing crisis of confidence in our Government and their efforts to determine if there are any American prisoners of war of missing-in-action personnel in Southeast Asia. Recent revelations of photographs and other potential evidence about POW's and MIA's in that area have raised concerns throughout the country that our Government is not doing enough to attempt to verify such evidence and enough to do everything we can to see if it is accurate and, if it is, to act on it.

This amendment would require the release of information to the public concerning the location, the treatment or condition of any personnel classified as a prisoner of war or as missing in action, and will allow the American people to judge for themselves. The amendment, however, would also provide for nonrelease of such information if it is properly classified, if it provides names of individuals and their next of kin, does not authorize such release if such release might jeopardize the safety of a prisoner of war which, of course, no one would want to do.

Mr. President, I recommend the amendment's adoption. I hope I am listed as a cosponsor of the amendment.

Mr. SMITH. Mr. President, I rise in support of the amendment of my colleague and friend and request that my name also be added as a cosponsor.

As the Senator from Arizona notes, I had similar legislation in the House of Representatives last year. I felt that legislation went a lot further than this particular piece of legislation. But still the basics are there, the intent is there that this information should be declassified at whatever pace we might want to declassify it.

We might have some disagreement, but the information should be declassified. Certainly what does not have to be classified after 20 some years ought to be released to the families and in some cases to the public.

So I think whether we do wind up with a select committee or Presidential commission or whatever the vehicle for congressional oversight, Senator MCCAIN and I and others on both sides of the aisle on this issue will be working together in our congressional oversight responsibilities to try to get this issue behind us, to get these questions answered on behalf of the families and, if there are men alive, get them home, and also to account for as many of these men as we from this conflict and put this thing behind us.

I thank the Chair and I yield the floor.

Mr. MCCAIN. Mr. President, I ask unanimous consent that Senators MACK and RIEGLE be added as cosponsors.

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

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1021) was agreed to.

Mr. NUNN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. NUNN. Mr. President, we have two amendments that I hope we can complete tonight. One is the Wirth amendment. I am hoping that we are going to be able to get unanimous consent as to how we would handle that one in terms of the debate and procedure. And also I would like to be able to handle the Johnston amendment tonight.

I do not know whether either one of them have a time agreement at this

stage. It would be my intent to propound a time agreement on the Wirth amendment. I do not have word that it has been cleared all the way around. I have asked the Senator from Louisiana to see if he can work on a time agreement. I do not control the floor, and everybody knows that, so it is an open floor. But it would certainly be my hope we could move to the one that has a time agreement.

Mr. JOHNSTON addressed the Chair.

Mr. NUNN. If we can have a time agreement, we can complete it. But if we have an amendment that is hopelessly bogged down, we are not going to make any progress tonight.

Mr. President, I still have the floor but I would be glad to yield to the Senator from Louisiana for a question.

Mr. JOHNSTON. Mr. President, if the Senator from Delaware is available to come on the floor, I think we can talk for just a moment about this. We have the Senator from Ohio here. He is the other player on this amendment. I think perhaps we could——

Mr. NUNN. Could we try to see about unanimous consent on the Wirth amendment, and then come back and see where we are? I believe that Senators are not far apart.

Mr. JOHNSTON. Yes.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, the distinguished Senator from Delaware [Mr. ROTH], the Senator from Louisiana, and I have been working on a product involving this subject matter, and it is a joint product. I do not know——

There is some question about who is the parent of this. The Senator from Delaware has been working on it for a long time. I am not anxious to stand on ceremony on parentage of this amendment, but I would like to pass it.

I think we could probably provide for an hour of debate, if that suits the Senator from Delaware and the Senator from Ohio and my colleague from Louisiana, Senator BREAUX. I wonder if we could provide for an hour on that? Is that agreeable to the Senator from Delaware?

Mr. ROTH. The Senator from Delaware would state that we are not in a position to agree to it at the present time. Other people on this side would have to have an opportunity to review it. But I think the matter could, in my judgment, be better reached if a quorum call was suggested.

Mr. NUNN. Mr. President, I see the Senator from Colorado and the Senator from Indiana on the floor. Are they prepared for me to propound a unanimous-consent request?

Mr. WIRTH. If the Senator will yield.

Mr. NUNN. I will be glad to yield to the Senator from Colorado.

Mr. WIRTH. I have suggested to the distinguished Senator from Indiana that I would be very happy to have a unanimous-consent agreement and a time limitation. If the Senator from Indiana desires to have a cloture vote and just do that straight up and down, as we did last year, of an hour, an hour and a half, equally divided, to do so. So it is entirely up to the Senator from Indiana and his colleagues as to what they would like to do. I am happy to do whatever works for the distinguished chairman of the committee.

I thank the Senator for yielding.

Mr. COATS. If the Senator will yield.

Mr. NUNN. I yield to the Senator from Indiana.

Mr. COATS. Mr. President, the propounding of a unanimous-consent request to have a limited amount of debate and then go to a cloture vote, which would essentially be the vote on the amendment—— The Senator from Colorado has indicated that if cloture was not achieved, he would withdraw the amendment.

What we are trying to secure is agreement on the other side for those who are opposed to the amendment, that if cloture were achieved, why the amendment would stand as is.

The Senator from Colorado has indicated to me a willingness to modify the amendment. I have talked to some of those Members who are interested in offering amendments, and that modification is not acceptable.

So I think where we are in terms of my getting agreement on the cloture procedure is to find out whether the Senator from Colorado would go back to his original amendment, which we had spent a number of hours discussing with Members. If the Senator is willing to do that, I might be able to get an answer very quickly.

Mr. WIRTH. I will be happy to. I will be happy to do whatever works for the Senator from Indiana, whatever eases the process in moving this along. We can go with the original amendment. I attempted to modify it in a way that might be helpful to the Senator from Indiana.

Mr. COATS. I appreciate the Senator's willingness to modify the amendment. He did so with the intent of making the process easier to conclude this evening, but we were not able to secure agreement across the board for that.

I informed the Senator from Georgia, if we could have just a few more minutes, I might be able to get back to the original amendment and get that question answered.

Mr. WIRTH. I thank my colleague.

Mr. NUNN. Mr. President, I thank my colleagues. I hope they will continue to work to get a time agreement. It appears to me we have constructive conversations going on about a time agreement on both the Wirth amendment and the Johnston-Roth amendment, Johnston-Breaux-Roth, Roth-Johnston, Breaux-Roth, Johnston-whatever it ends up being. It is certainly a partnership as far as I am concerned.

Mr. President, what I would suggest, I have about 15 cleared amendments here. I would like to proceed to do those while the parties continue to talk and then perhaps we can get a time agreement on one of those amendments and proceed with it while the other is being worked on.

AMENDMENT NO. 1022

(Purpose: to improve the inventory management policies and procedures of the Department of Defense)

Mr. NUNN. Mr. President, on behalf of Senators Glenn and Levin, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Georgia [Mr. NUNN], for Mr. Glenn (for himself) and Mr. Levin, proposes an amendment numbered 1022.

On page 249, between lines 3 and 4, insert the following new sections:

**SEC. 835. IMPROVEMENT OF INVENTORY MANAGEMENT POLICY AND PROCEDURE.**

(a) IMPROVEMENT IN INVENTORY MANAGEMENT POLICY.—Section 2458(a) of title 10, United States Code, is amended—

(1) striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(3) set forth a uniform system for the valuation of inventory items by the military departments and Defense Agencies.".

(b) ANNUAL REPORT ON INVENTORY.—Section 2721 of title 10, United States Code, is amended—

(1) by inserting "(a)" before "Under"; and

(2) by adding at the end the following new subsection:

"(b) The regulations prescribed pursuant to subsection (a) shall include a requirement that the records maintained under such subsection—

"(1) to the extent practicable, provide up-to-date information on all items in the inventory of the Department of Defense;

"(2) indicate whether the inventory of each item is sufficient or excessive in relation to the needs of the Department for that item; and

"(3) permit the Secretary of Defense to include in the budget submitted to Congress under section 1105 of title 31 for each fiscal year, information relating to—

"(A) the amounts proposed for each appropriation account in such budget for inventory purchases of the Department of Defense; and

"(B) the amounts obligated for such inventory purchases out of the corresponding appropriations account for the preceding fiscal year.".

(c) IMPLEMENTATION.—The Secretary of Defense shall establish the uniform system of

valuation described in section 2458(a)(3) of title 10, United States Code (as added by subsection (a)), and prescribe the regulations required by section 2721(b) of such title (as added by subsection (b)), not later than 180 days after the date of the enactment of this Act.

In section 2(b), amend the table of contents by inserting after the item relating to section 834 the following new item:

Sec. 835. Improvement of inventory management policy and procedure.

Mr. NUNN. I inform my colleague from Virginia that these are amendments that have been cleared on both sides. I will give a very brief description of the amendment so there will be no mistake about it.

Mr. President, this amendment will continue the effort to improve inventory management in the Defense Department by requiring the Department of Defense to establish a uniform system for the evaluation of inventory items in DOD, and by requiring that inventory reports in DOD, to the extent practicable, include up-to-date information on all inventory items in DOD.

This amendment has been cleared on both sides. I would like to have it adopted.

Mr. WARNER. We have no objection.

IMPROVEMENTS IN INVENTORY MANAGEMENT

Mr. GLENN. Mr. President, I rise to offer an amendment to S. 1507, cosponsored by Senator Levin, to improve DOD's inventory management. In my view, this amendment is necessary to correct deficiences in the Department of Defense's practices to ensure that DOD's inventory of secondary items is valued correctly and that there is greater accountability for all on-hand items available to the military departments and defense agencies. The goal of this amendment is consistency and accountability in DOD inventory management.

My amendment would require three things:

First, that the Secretary of Defense set forth a uniform system for the valuation of inventory items by the military departments and defense agencies;

Second, that the Secretary of Defense revise the regulations to maintain inventory records in a manner that recognizes, to the maximum extent practicable, all levels of on-hand inventory maintained by the Department of Defense and reflects the extent to which such inventory in applicable or inapplicable to the Department's inventory requirements;

Third, that the Secretary of Defense maintain records of the Department's annual inventory budgets and expenditures, including the amount of money the Department includes in its budgetary requests for inventory purchases each year, and in which accounts, and the amount of money the Department spends for inventory items each year and out of which accounts such expenditures are made.

All indications from within DOD are that these proposed changes are feasible and along the lines DOD is already heading. Plainly and simply, my amendment would ensure that these improvements occur sooner rather than later, and do not fall by the wayside.

DOD's centrally managed, on-hand inventory remains the largest in the world at a reported $102 billion. As you can see, we are not talking about small amounts here. The management of these inventories has been of interest to the Governmental Affairs Committee, which I chair, for many years now. The Committee held several hearings on DOD inventory management problems:

In October 1987 and in March 1990, we examined the huge growth in unrequired spare parts and the problems DOD was having accounting for and storing this inventory, including Stinger missiles, aircraft spare parts, and nuts and bolts.

In March 1988, we reviewed DOD's loss of control over tens of billions of dollars of property furnished to Government contractors. There wasn't even an inventory kept of it.

In April 1989 and in March 1991, we examined very severe problems in the quality of parts purchased by DOD. In February 1990, we heard that the financial systems that are supposed to provide accountability and financial control over the Air Force's inventory of spare parts and supplies do not provide accurate, reliable data supporting either the quantities or the value of these inventories.

Recently, on June 17, 1991, the committee explored what progress the Department has made in better managing its inventories and reducing their size, and received recommendations from GAO to improve inventory management.

These problems have been publicly highlighted by many others as well, including the Armed Services Committees, the GAO, the Office of Management and Budget, the DOD Inspector General, and the DOD itself through the Federal Managers Financial Integrity Act process. Particularly worth noting is that two years ago both the GAO and OMB targeted these inventories as a "high risk" area, with the potential for waste, fraud, and abuse.

OMB's and GAO's descriptions of the problems bear repeating in 1991 because it is clear that the DOD's inventory management problems are not close to coming off their "high-risk" lists:

According to GAO:

Department of Defense inventories exceed $100 billion of which unneeded or excess inventory exceeds $30 billion. The excess inventory along with numerous other indicators (e.g., the failure to cancel orders where excess stock is already on hand) reflect financial management problems. Management incentives focus on filling orders and obligating funds. There is no corresponding focus on reducing costs or controlling or securing stock, i.e., economy and efficiency. The current pressure to reduce the DOD budget in response to recent world events provides additional incentives to make major improvements in the supply system.

According to OMB:

Each year the Department of Defense manages 4.9 million supply items and maintains a supply inventory valued at $103 billion. DOD has identified 18 material weaknesses in supply operations. These include: inadequate assurance that items are received before payments are made; ineffective management of spare part inventories; and inaccurate catalog identification numbers. These weaknesses lead to payments for goods not received and no assurance that materials listed as available in inventory are physically warehoused and available for use. DOD has classified supply operations as a DOD-wide internal control issue.

The bottom line remains that DOD buys more than it needs, what it buys is too often substandard, and the Department doesn't seem able to adequately account for what it has! I had hoped with $102 billion at stake, that DOD would have made considerably more progress in correcting its inventory management problems. Since that isn't the case, I believe that certain statutory fixes are required to keep DOD on the right course.

My amendment essentially derives from the GAO report released at the July 17th Governmental Affairs Committee hearing which recommended that the DOD Secretary:

First, direct the military services and DLA to use a uniform inventory valuation method that will provide comparable data between periods and across organizations, and fully disclose any deviations from uniform valuation;

Second, report inventory in a manner that recognizes all levels of on-hand inventory and reflects requirements that are consistent with the inventory that DOD defines as the maximum assets which may be onhand or on order at a given time.

With regard to GAO's recommendation No. 1, DOD and GAO both acknowledge that it was a change in valuation method alone that contributed 99 percent to DOD's reported reduction in on-hand inventory from $109 billion in fiscal year 1989 to $102 billion in fiscal year 1990. Moreover, GAO reports that the three services and DLA are currently using different methods of valuation, thus making it practically impossible to determine accurately the on-hand inventory across organizations and between periods. The GAO has commended DOD for its efforts to improve its valuation methods.

At the hearing Diane K. Morales, the Deputy Assistant Secretary of Defense for Logistics, testified that valuation methods are different across the services. She also stated that the comptroller is "looking at how we will in fact more accurately portray our inventory, and [has looked] at the Navy prototype and [has] considered other options as

well. I believe the one they are about to lock in on is last acquisition cost."

Clearly my amendment—which calls on the Secretary of Defense to set forth a uniform system for the valuation of inventory items by the military departments and defense agencies within 180 days of enactment—merely reinforces efforts already underway, but ensures that this issue will be resolved in a reasonable period of time.

With regard to GAO's recommendation No. 2, GAO reported that DOD includes only centrally managed inventory—wholesale—in its Supply System Inventory Report, but excludes items aboard combat ships and with troop units—retail. These exclusions result in billions of dollars of inventory not being reported at the DOD level; for example, 7.6 billion dollars' worth of ship, submarine, and aviation supplies held by the Navy alone. Therefore, the DOD centrally managed level does not know what is available at the user level. According to GAO:

One of the added difficulties at that [retail] level is that there is no central visibility over those inventories. . . . At least at the wholesale level, the so-called wholesale level, we have systems in place to bring these things together. You don't have those same kind of systems with respect to local stocks, and therefore item managers do not have visibility over them. And we have example after example where those things are in an excess position and the item manager is buying them.

At the hearing, Deputy Assistant Secretary Morales testified that at present, there is a record at the user level of supply items, for example, the combat ship "has a record of every single thing that it has." She also testified about its intention to improve the visibility of locally controlled items to the central supply system, and visibility of items among the services. DOD calls this "Total Asset Visibility," which success appears to depend upon available technology. GAO reported that this increased visibility effort is planned for completion in 1994.

Also at the hearing, GAO reported that DOD's "Supply System Inventory Report" overstates the amount of required inventory. GAO's analysis of Navy and Air Force stratification reports showed that $10 billion of $39.6 billion on-hand inventory DOD reported as required exceeded the amount of inventory that DOD defines as the maximum assets which may be on hand or on order as of a given date. In other words, GAO found that $10 billion that DOD identified as required was actually unrequired, to use GAO's terminology.

However, Deputy Assistant Secretary Morales took issue with GAO's use of the term unrequired inventory, and clarified that within DOD, such inventory is rather "not designated as required for the current budget year." In DOD's view according to the testimony, it is all "required," but the DOD's inventory reduction plan was created to lower the amount of inventory "in the pipeline" as much as possible.

My amendment would facilitate implementation of GAO's recommendation No. 2 by requiring the DOD Secretary to revise regulations promulgated pursuant to section 2721 of title 10, United States Code, regarding maintenance of records in a manner that more fully recognizes all levels of on-hand inventory maintained by the Department of Defense, and that reflects the extent to which such inventory is "applicable or inapplicable" to the Department's stated inventory requirements. I strongly recommend that the DOD consult with GAO prior to revising these regulations within 180 days of enactment, so that differences of opinion between these two entities over terminology and the value of expanding the universe of retail level inventory can be aired and resolved.

Finally, my amendment addresses a third issue which arose at the committee's July 17 hearing concerning DOD's budget submissions for inventory purchases and expenditure of moneys for inventory items. GAO testified that although it was able to agree with DOD that the overall budget request was for $25 billion, it has been difficult to sort out exactly how this year's request differs from last year's. Mr. James H. Reay, director, Supply Management Policy, testified in response that it could be "5 to 6" numbers per service to add up to the total DOD budget request.

In my view, this should not be an issue in controversy. Without question, the Department of Defense should maintain records on its budgetary requests for inventory by account, and on its expenditures by account. Therefore, my amendment would require that the Secretary revise his regulations within 180 days of enactment so that records are so maintained on the Department's annual inventory budgets and expenditures. Again, I encourage DOD to consult with GAO prior to finalizing these revisions.

I urge my colleagues to support this amendment.

DOD INVENTORY AMENDMENTS

Mr. LEVIN. Mr. President, for too long, the Department of Defense has been wasting taxpayer dollars on unused and unneeded inventory purchases. As a result of this spending spree, DOD now has more than $100 billion of inventory sitting in its warehouses. GAO has informed us that DOD may have as much as $100 billion more inventory at other levels and in other categories not included in the DOD totals. DOD itself acknowledges that $30 billion of this inventory is inapplicable—meaning that it doesn't meet the Pentagon's requirements.

GAO recently looked at $39 billion of inventory that DOD classifies as required, and found that $10 billion of that requried inventory "exceeded the maximum needed as defined by DOD instructions to item managers for purposes of ordering items". That's $10 billion more, on top of the $30 billion of inventory that even DOD acknowledges to be inapplicable.

Every year, we lose billions of dollars disposing of this unneeded inventory. In fiscal year 1988, for example, DOD sold off $6.9 billion worth of unneeded inventory for $72 million. In fiscal year 1989, DOD sold off 8.2 billion unneeded dollars worth of inventory for $80 million. These may be bargain basement prices for the purchaser, but they are a dead loss for the taxpayer.

Nonetheless, DOD continues to waste money on unneeded inventory purchases. For example:

In June 1991 the DOD inspector general looked at consumable line items maintained by the Pentagon. The IG reported that "14.5 percent of the ordered supplies, valued at $378.9 million, represented premature or unnecessary purchases."

When the IG looked at Apache helicopter parts, it found: "Eighty-four items—47 percent—had due-in or on hand stock that exceeded actual requirements by $30 million."

GAO recently found that the Navy has purchased a 6-year supply of navigation lights and the Air Force has purchased a 5.5-year supply of disks and hubs for F–15 and F–16, all of which DOD categorizes as required.

According to GAO, the Pentagon routinely overestimates its inventory needs; maintains duplicative stocks at different inventory levels; buys inventory before it is needed; and fails to cancel the purchases when it finds they are not needed. For these reasons, the head of GAO's National Security Division recently testified before the Senate Governmental Affairs Committee that DOD's ivnentory budget could absorb a cut of 10 percent or $1 to 2 billion without any adverse effect on national security.

Last year, I attempted to address some of the inventory management problems identified by the DOD inspector general and the comptroller general through amendments to the DOD Authorization Act. These amendments required DOD to institute new guidelines on inventory levels; consider cost-cutting success in personnel evaluations of inventory item managers; reduce the funds available for purchases out of inventory by 5 percent, or more than $700 million; and limit the amount of such funds that could be obligated for future inventory purchases.

Despite these amendments and some effort by DOD, big problems still remain and there is a lot more that DOD could do. For example, one inventory practice that particularly concerned us when we learned about it last year was DOD's routine purchase of redundant

stocks of inventory in various required categories.

GAO provided the following alarming example of how this works. According to the GAO, the Navy projected an annual demand of 82 housing seals for the Mark 46 torpedo. It had 2,526 housing seals on hand—an estimated 30-year supply. How did this happen?

Faulty math was part of the problem. Here's how the Navy calculated it's requirements for 2 years; 84 items—a 1-year supply—for the first 6 months; 170 items—about a 2-year supply—for the next 12 months; and 167 items—about a 2-year supply—for the following year. That's a total of 421 housing seals—a 5-year supply, to cover the Navy's requirements for 2 years.

For good measure, the Navy said that it needed an additional 154 items for a "safety level"; 58 items to meet "additional needs estimated by users"; and 274 items to cover procurement lead times." That's another 5 year's supply. And on top of all of these so-called "required items", it turned out that the Navy had 1,619 unrequired housing seals—about 20 more years of supplies—that even they admitted they didn't need.

In response to these problems, my amendments to last year's DOD Authorization Act required the Department to institute new guidelines on inventory levels. The committee report specifically required that the new inventory guidelines address the problem of redundant inventory stocks in various required categories. The report states:

GAO found that the Defense Department currently retains numerous categories of "required" stock, including current year requirements; two additional years' requirements; "safety level" stocks; additional needs estimated by users; and additional stocks to cover procurement lead times. when demand is overstated—as GAO frequently found to be the case—the result is procurement and storage of inventory far beyond what is actually needed.

A uniform inventory policy should enable the Defense Department to eliminate the acquisition and retention of such redundant stock. The committee intends that the military Services and Defense Agencies include in all but exceptional cases no more than two years of operating stocks on hand and often substantially less.

This legislative approach—requiring DOD to draft new guidelines and listing specific problems to be addressed in the committee report—was taken to avoid micromanagement and allow the Department flexibility to design its own inventory policy.

Unfortunately, DOD appears to have used the flexibility in last year's amendment to avoid addressing the very problems that prompted the amendment and are outlined in the committee report. Despite the expiration of the statutory deadline in early May, the Department of Defense still has not issued the required uniform guidance and DOD Instruction 4140.24 still includes the following requirements: current year requirements, 2 years of additional requirements; "safety level" requirements; "repair cycle" requirements; "administrative lead time" requirements; "production lead time" requirements; and "procurement cycle" requirements. All of these redundant levels of inventory are purchased for peace-time operating needs—they do not include the Department's so-called war reserves.

Moreover, GAO reports that DOD actually plans to increase its inventory requirements by adding an additional year to existing inventory requirements. The Air Force has already added the additional year to its requirements and DOD has refused to cancel this action.

At a Governmental Affairs Committee hearing in July, Deputy Assistant Secretary of Defense Diane Morales insisted that all of these levels of inventory are required—

Ms. MORALES. It is all required. * * * Requirement adds, on top of the demand, the other items that the GAO has in fact listed in its report, that is the war reserve levels, in-transit and back order levels, a safety level, the insurance level, the repair cycle level and the production lead time. That in fact is the pipeline.

* * * * *

Senator LEVIN. You start with a 2-year supply. On top of that you [have] got a safety level, an insurance level, a lead time level?

Ms. MORALES. Yes.

Senator LEVIN. How many other levels have you got?

Ms. MORALES. A repair cycle if it is a repairable.

Senator LEVIN. Repair cycle. And what else?

Ms. MORALES. In-transit and back order, items on back order.

Senator LEVIN. Why do you need a safety level and an insurance level if you start with a 2-year supply?

Ms. MORALES. All right. The 2-year supply is what you need for a 2-year level. A safety level is there because you know when you have ordered, you know what the lead time is for your item. Things happen. There is a problem with the manufacturer, there is a problem with transportation, it may not get there. Can you afford to have the system down?

Senator LEVIN. Isn't that why you need the 2-year supply, because things happen?

Ms. MORALES. No, the 2-year supply is what you are actually using all of the time.

Senator LEVIN. No, you are using that in 2-years.

Ms. MORALES. Well, all of the time over 2-years, yes. But——

Senator LEVIN. You want a 2-year supply because you want to build in a safety level. Otherwise you would put in a one-year supply.

How many safety levels do we need here? I mean, you [have] got a safety level, an insurance level, a lead time level.

In short, DOD still insists on the old way of doing business—purchasing supplies in six or seven redundant categories, without regard to the burden that this places on the taxpayer.

The amendment that I am offering today would address this problem by writing into law the directions from last year's committee report—that DOD should consolidate its required inventory categories to include in all but exceptional cases no more than 2 years of operating stocks on hand and often substantially less.

Under this amendment, DOD would be permitted to make purchases that are necessary to maintain 2-years of operating stocks on hand. However, the Department would be prohibited from extending this requirement to cover 3-years of operating stocks, as it has considered doing and the Air Force has apparently already done. Furthermore, DOD would not be permitted to purchase inventory items in other categories, such as "safety levels," "insurance levels," or "repair cycle levels" without a specific, advance written determination by the head of the procuring activity that the purchase was necessary for the national security.

Mr. President, the Department of Defense has been wasting money on purchases of redundant and unneeded inventory items for too long. This amendment would reduce such waste by requiring the Department to eliminate redundant categories of inventory and limit its purchase to what is really needed. I hope my colleagues will join me in supporting this important measure.

Mr. President, there is a second inventory issue which should also be addressed in this bill. During the committee and floor consideration of last year's DOD authorization bill, we asked GAO and DOD how much DOD was spending on inventory. We learned that:

DOD's budget request to the Congress does not contain a separate line item or items for inventory expenditures;

Many different DOD agencies and commands spend money for inventory;

This money comes out of many different accounts—sometimes these agencies and commands spend O&M money, sometimes they spend money out of other accounts; and

There is no consolidated accounting or what these different agencies and commands spend on inventory.

Because inventory spending is spread through different agencies and commands and different accounts, it is almost impossible to add up all of the expenditures and find out how much DOD has spent, or plans to spend for inventory. When we asked DOD and GAO for their estimates last year, the two agencies used two different methods of calculation and came up with two very different estimates, which could not be reconciled. This year, we asked DOD and GAO the same question, and were again unable to come up with reconciled estimates. Moreover, DOD has changed its accounting systems during the last year, so that last year's estimates are not comparable to this year's estimates.

As a result, we do not know the answers to even the following simple questions:

How much money does the administration budget contain for inventory purchases for next year?

How does that request compare to last year's budget?

How much money was actually spent for inventory last year?

Did DOD actually make the 5-percent cut in inventory expenditures that was required by last year's Authorization Act?

This is unacceptable. When DOD asks us for money to purchase inventory, it should tell us how much money it wants and how that compares to previoius expenditures and requests. We need this information to make a judgment as to how well DOD is doing at fixing its inventory management systems.

Senator GLENN has offered an amendment that would require that DOD provide us with this basic information. Under the Glenn amendment, which I have cosponsored, DOD would be required to maintain records on its annual inventory budgets and expenditures, including: First, records of the amount of money the Department includes in its budgetary requests for inventory purchases, and in which budgetary accounts; and second, the amount of money the Department spends for inventory purchases each year, and out of which budgetary accounts such expenditures are made.

Mr. President, the Glenn amendment requires the most basic accountability for how the Department of Defense is spending the taxpayer's dollars. I strongly endorse the Glenn amendment and call upon my colleagues to do the same.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1022) was agreed to.

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

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

Mr. DOLE. Mr. President, I wonder if the distinguished manager might yield for a question?

Mr. NUNN. I am glad to yield for a question.

Mr. DOLE. It is about 9:20. We are starting to get inquiries about whether or not there will be additional rollcalls this evening. I know there are probably a couple of amendments that may require rollcalls. I wonder if the distinguished managers might give me some insight that I can pass on to my colleagues on both sides of the aisle.

Mr. NUNN. I say to the distinguished minority leader that we have two amendments where I am trying to get a time agreement of no more than 1 hour on each. One would be the Wirth amendment, which if we do get a time agreement would go to a vote on cloture, and that would be the basic vote on the amendment. The other one would be a Johnston amendment that is being worked on together with Mr. ROTH and Mr. BREAUX, and we also are trying to get a time agreement of a hour or less on that one, hopefully about 40 minutes.

It would be my view if we could get a time agreement on either of those amendments in the next 10 minutes we would try to proceed to either or both of them this evening and we would require one or two rollcall votes.

It would be my view that we would not stay any later than around 11:30, 11:45 in that timeframe. If we can handle these two amendments tonight, we will have a chance of finishing this bill at a reasonable hour tomorrow. If we do not handle these two amendments tonight I know of at least five other amendments that we have rollcall votes on and debate tomorrow. So it moves us more toward tomorrow night.

It really depends on the body. If we want to go home in the next 15 minutes, not handle these amendments tonight, in my view we are talking about very late tomorrow afternoon or tomorrow evening.

Mr. DOLE. As I understand there may be an objection to the Wirth amendment. I am not familiar with the amendment, do not know what it does; that there have been discussions between——

Mr. NUNN. There are discussions going on.

Mr. DOLE. Between Senator COATS and JOHNSTON, with reference to the Johnston Amendment if we can determine the next few minutes that we can or cannot get agreements the managers could make a decision on what they might do.

Mr. NUNN. I suggest if we do not get agreement, we try to debate one or both of those amendments tonight. If we do not get an agreement, there is not any need keeping people around because we will probably not have a vote for a long time.

I would also inform my colleagues if we do not get agreement on these two amendments tonight I do not see how we can finish this bill before 8 or 9 o'clock tomorrow night. It we do get agreement on these two amendments tonight, can handle them tonight, I believe we can get through here sometime by midafternoon tomorrow. That is a guess as everyone knows, because you never know what is coming. That is my best estimate now.

Mr. DOLE. I would say to the managers, I will try personally to see if we can determine one way or the other, because it does not do anybody any good just not to know. So once we can make the judgment then the managers can decide whether to proceed without an agreement or try to get an agreement.

Mr. NUNN. I thank the minority leader. I agree with that completely.

Mr. President, I will be glad to be interrupted on these amendments at any time either one of these have a time agreement if we have one. But I am going to proceed with the amendments.

Mr. President, unless there is a change of mind, the only time agreement that appears available on the Johnston amendment would it seems to me 2½ hours. I myself would object to that because I do not think it is fair to other people. I believe if we do not cut the time down below that, it is going to set a precedent. We will be here Saturday, Sunday, from now on. I object to that kind of time agreement. I would encourage the parties to continue to talk behind the scenes and see if they can cut that down by getting a better fix on how many people want to speak.

AMENDMENT NO. 1023

(Purpose: To prohibit the acquisition of unneeded items of supply by the Department of Defense stock funds, and for other purposes)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. NUNN], for Mr. LEVIN, proposes an amendment numbered 1023.

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

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

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . ACQUISITION OF INVENTORY.

(a) The Secretary of Defense may not incur any obligations against the stock funds of the Department of Defense for the acquisition of any items of supply if such acquisition is likely to result in an on-hand inventory (excluding war reserves) of such items of supply in excess of two years of operating stocks.

(b) Notwithstanding subsection (a), the head of a procuring activity may authorize the acquisition of an item of supply if such head of a procuring activity determines in writing that such acquisition is necessary for industrial base purposes or for other national security reasons.

Mr. NUNN. Mr. President, this amendment will continue the efforts to reduce inventory levels in the Defense Department by prohibiting DOD procuring activities from obligating funds to purchase inventory items that would result in an on-hand inventory or excess of 2 years of operating stocks. The head of a procuring activity can waive this restriction for industrial base purposes or for national security

reasons. This amendment has been cleared on both sides. I urge its adoption.

Mr. WARNER. We have no objection.

The PRESIDING OFFICER. Is there further debate on the amendment of the Senator from Michigan? If not, the question is on agreeing to the amendment.

The amendment (No. 1023) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1024

Mr. WARNER. Mr. President, I will send to the desk an amendment sponsored by Senator Cohen. It would amend the Employment Pay Act to require vendors who sell fish and seafood products to the Government be paid within the same time period—the act specifies for vendors of poultry, eggs, and meat products. It is my understanding that the amendment has been cleared upon both sides.

(Purpose: To amend section 3903 of title 31, United States Code, to require prompt payment by the United States for purchases of fish.)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. COHEN, proposes an amendment numbered 1024.

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

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

The amendment is as follows:

**SECTION 1. PROMPT PAYMENT FOR PURCHASE OF FISH.**

Section 3903(2) of title 31, United States Code, is amended by striking "provide" and inserting "or of fresh or frozen fish (as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), provide".

Mr. WARNER. Mr. President, I ask that the Senator from Virginia, Mr. Warner be added as a cosponsor.

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

Mr. NUNN. I ask that my name be added as a cosponsor.

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

The PRESIDING OFFICER. Is there any further debate on the amendment of the Senator from Maine? If not, the question is on agreeing to the amendment.

The amendment (No. 1024) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1025

Mr. NUNN. Mr. President, on behalf Senator MITCHELL and Senator COHEN, I send an amendment to the desk to improve the base-closure process, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Georgia [Mr. NUNN], for Mr. MITCHELL (for himself and Mr. COHEN,) proposes an amendment numbered 1025.

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

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

The amendment is as follows:

On page 368, strike out lines 14-16 and insert the following in lieu thereof:

"(B)(1) Not more than one-fifth of the professional analysts of the Commission staff may be persons detailed from the Department of Defense to the Commission.

"(2) No person detailed from the Department of Defense to the Commission may be assigned as the lead professional analyst with respect to a military department or defense agency.".

On page 371, between lines 6 and 7, insert the following:

"(6) The Secretary of Defense shall prescribe regulations to ensure that any information provided to the Commission by a person described in paragraph (5)(B) shall, within 24 hours of the submission of such information to the Commission, be submitted to the Senate and the House of Representatives, and shall be made available to the Members of each such House in accordance with the rules of each such House.".

BASE CLOSURE PROCESS IMPROVEMENTS

Mr. NUNN. Mr. President, the amendment would enhance the independence of the Commission's staff by limiting the role of Department of Defense detailees to the Commission, and would improve congressional oversight by requiring DOD to promptly forward to Congress all documents provided by the Department to the Commission.

I understand that this amendment has been cleared on both sides.

I urge the adoption of the amendment.

AMENDMENT NO. 1026

(Purpose: To revise the restrictions relating to interim staff of the Defense Base Closure and Realignment Commission.)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Georgia [Mr. NUNN], for himself, Mr. DIXON, and Mr. WARNER, proposes an amendment numbered 1026.

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

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

The amendment is as follows:

On page 369, strike out line 8 and all that follows through "(D)" on line 16, and insert in lieu thereof the following:

"(A) there may not be more than 15 persons on the staff at any one time;

"(B) the staff may perform only such functions as are necessary to prepare for the transition to new membership on the Commission in the following year; and

"(C)

THE BASE CLOSURE COMMISSION STAFF

Mr. NUNN. Mr. President, this amendment alters a provision in the bill as reported by permitting the Defense Base Closure Commission to retain a core staff of no more than 15 employees, of whom no more than 5 would be analysts. This provision, recommended by the Commission Chairman will permit the Commission to file a follow-on report, respond to ongoing administrative matters, develop an experienced, independent analytical capability, and prepare for the appointment of a new commission.

This provision has been cleared on both sides, and I urge its adoption.

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

The amendment (No. 1026) was agreed to.

Mr. NUNN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1027

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. LOTT, proposes an amendment numbered 1027.

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

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

The amendment is as follows:

At the end of Title XI, General Provisions, insert the following:

**"SEC. 11 . REPORT ON SHIPBUILDING EXPORT LICENSE.**

"Not later than four months after enactment of this bill, the Secretary of the Navy shall report to the Committees on Armed Services of the Senate and the House of Representatives on the criteria to be used in evaluating requests by corporations in the United States for a license to import components of submarines designed and manufactured abroad for further assembly and re-export."

REPORT ON DIESEL SUBMARINE EXPORTS

Mr. WARNER. Mr. President, this is an amendment requiring the Navy to

report on the criteria it intends to use in evaluating requests by corporations to import submarine components and assemble these components for export. This provision requires only a report and does not prejudge the merits of any such request.

I understand that the amendment has been cleared on both sides, and I urge the adoption of the amendment.

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

The amended (No. 1027) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1028

Mr. WARNER. Mr. President, on behalf of Senator THURMOND and myself, I send an amendment to the desk, which is also cosponsored by 17 other Senators, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislaive clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. THURMOND, (for himself, Mr. WARNER, Mr. NUNN, Mr. HOLLINGS, Mr. ROBB, Mr. BENTSEN, Mr. LIEBERMAN, Mr. REID, Mr. BRYAN, Mr. FOWLER, Mr. DOLE, Mr. COATS, Mr. SIMPSON, Mr. DANFORTH, Mr. GRAMM, Mr. JEFFORDS, Mr. LEAHY, and Mr. SHELBY) proposes an amendment numbered 1028.

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

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

The amendment is as follows:

**SEC. . COMMENDATION OF THIE MILITARY COLLEGES FOR THEIR CONTRIBUTIONS TO TRAINING THE CITIZEN—SOLDIERS.**

(a) FINDINGS.—Congress makes the following findings:

(1) The number of essential military colleges—institutions that the Department of Defense has recognized as constituting a special aspect of American higher education—has decreased from 11 institutions in 1914 to only 4 today: Norwich University, founded in 1819; Virginia Military Institute, established in 1839; The Citadel, The Military College of South Carolina, chartered in 1842; and North Georgia College, which opened in 1873;

(2) The hallmark of these institutions has been their dedication to the principle of the citizen-soldier, and in this regard are joined in spirit and devotion by the Cadet Corps at Texas A&M University, and Virginia Polytechnic Institute and State University;

(3) Citizen-solidiers are educated, trained, and inspired to become productive members of society in any calling, but are also prepared to serve their country in a military role during times of war or national peril; and

(4) These citizen-soldiers have accepted as their duty an obligation to serve their country in every instance of war since the Mexican War, and have without fail or hestation answered the call to arms—most recently with service in Southwest Asia as part of Operation Desert Storm: now, therefore, be it

(b) RECOGNITION AND COMMENDATION.—In light of the findings in subsection (a), the Congress recognizes and commends military colleges for the unique contributions they have made and continue to make, and urges citizens of the United States to support the concept of the citizen-soldier to which these colleges are dedicated.

COMMENDATION OF MILITARY COLLEGES

Mr. WARNER. Mr. President, this amendment recognizes and commends military colleges for the unique contributions they have made and continue to make. These colleges are Norwich, Virginia Military Institute, the Citadel, and North Georgia College. Although no longer military schools, Texas A&M and Virginia Polytechnic Institute and State University are also recognized. The amendment urges the citizens of the United States to embrace the principles on which these colleges are dedicated—the citizen soldier.

I understand the amendment has been cleared on both sides, and I urge adoption of the amendment.

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

The amendment (No. 1028) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1029

(Purpose: To amend the Office of Federal Procurement Policy Act to simplify ethics rules concerning Governmentwide procurement, and for other purposes)

Mr. NUNN. Mr. President, I send to the desk an amendment on behalf of Senators LEVIN, GLENN, COHEN, BINGAMAN and COATS, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Georgia [Mr. NUNN], for Mr. LEVIN (for himself, Mr. GLENN, Mr. COHEN, Mr. BINGAMAN, Mr. COATS, and Mr. WARNER) proposes an amendment numbered 1029.

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

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

The amendment is as follows:

On page 239, line 5, strike out all through line 6 on page 240 and insert in lieu thereof the following:

**SEC. 826. EQUAL APPLICATION OF POST-EMPLOYMENT RESTRICTIONS.**

(a) PROCUREMENT ETHICS SIMPLIFICATION.—Section 27 of the Office of Procurement Policy Act (41 U.S.C. 423) is amended—

(1) in subsection (c)—

(A) in paragraph (1) by inserting "only" after "subsection (b)(1)";

(B) in paragraph (1)(A) by inserting "(including the modification or extension of a contract)" after "any procurement";

(C) by striking out paragraphs (2) and (3) and inserting in lieu thereof:

"(2) Whenever the head of a procuring activity approves a recusal under paragraph (1), a copy of the recusal request and the approval of the request shall be retained by such official for a period of time (not less than five years) specified in regulations prescribed in accordance with subsection (o).

"(3)(A) Except as provided in subparagraph (B), all recusal requests and approvals of recusal requests pursuant to this subsection shall be made available to the public on request.

"(B) Any part of a recusal request or an approval of a recusal request that is exempt from the disclosure requirements of section 552(b)(1)(A) of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public under subparagraph (A)."; and

(D) in paragraph (4)—

by striking out "competing contractor" and inserting in lieu thereof "person";

(2) in subsection (e)(7) by adding at the end thereof the following new subparagraph:

"(C) A contractor in a contract of less than $500,000 is exempt from the requirement of paragraph (1)(B) with respect to such contract.";

(3) in subsection (f)—

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) No individual who, in the year prior to separation from service as an officer or employee of the Government or an officer of the uniformed services in a covered position, participated personally and substantially in acquisition functions related to a contract, subcontract, or claim of $500,000 or more and—

"(A) engaged in repeated direct contact with the contractor or subcontractor on matters relating to such contract, subcontract, or claim; or

"(B) exercised significant ongoing decisionmaking responsibility with respect to the contractor or subcontractor on matters relating to such contract, subcontract, or claim,

shall knowingly accept or continue employment with such contractor or subcontractor for a period of 1 year following the individual's separation from service, except that such individual may accept or continue employment with any division or affiliate of such contractor or subcontractor that does not produce the same or similar products as the entity involved in the negotiation or performance of the contract or subcontract or the adjustment of the claim.

"(2) No contractor or subcontractor, or any officer, employee, agent, or consultant of such contractor or subcontractor shall knowingly offer, provide, or continue any employment to another person, if such contractor, subcontractor, officer, employee, agent, or consultant knows or should know that the acceptance of such employment is or would be in violation of paragraph (1).

"(3) The head of each Federal agency shall designate in writing as a 'covered position' under this section each of the following positions in that agency:

"(A) Each source selection authority, each member of a source selection evaluation board, the chief of each financial or technical evaluation team, and any other position in which the incumbent is likely personally to exercise substantial responsibility for ongoing discretionary functions in the evaluation of proposals or the selection of a source for a contract in excess of $500,000.

"(B) Each procuring contracting officer and any other position in which the incum-

bent is likely personally to exercise substantial responsibility for ongoing discretionary functions in the negotiation of a contract in excess of $500,000 or the negotiation or settlement of a claim in excess of $500,000.

"(C) Each program executive officer, program manager, deputy program manager, and any other position in which the incumbent is likely personally to exercise similar substantial responsibility for ongoing discretionary functions in the management or administration of a contract in excess of $500,000.

"(D) Each administrative contracting officer, each official assigned on a permanent basis to a Government Plant Representative's Office, and any other position (including auditor and quality assurance positions) in which the incumbent is likely personally to exercise substantial responsibility for ongoing discretionary functions in the on-site oversight of a contractor's operations with respect to a contract in excess of $500,000.

"(E) Each position in which the incumbent is likely personally to exercise substantial responsibility for ongoing discretionary functions in operational or developmental testing activities involving repeated direct contact with a contractor regarding a contract in excess of $500,000.";

(4) in subsection (l)—

(A) by inserting "who are likely to be involved in contracts, modifications, or extensions in excess of the small purchase threshold" after "its procurement officials"; and

(B) by striking out "(e)" each place it appears and inserting in each such place "(f)";

(5) by amending subsection (n) to read as follows:

"(n) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

"(1) authorize the withholding of any information from the Congress, any committee or subcommittee thereof, a Federal agency, any board of contract appeals of a Federal agency, the Comptroller General, or an inspector general of a Federal agency;

"(2) restrict the disclosure of information to or its receipt by any person or class or persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

"(3) restrict a contractor from disclosing its own proprietary information or the recipient of information so disclosed by a contractor from receiving such information; or

"(4) restrict the disclosure or receipt of information relating to a Federal agency procurement that has been canceled by the agency, and that the contracting officer determines in writing is not likely to be resumed.";

(6) in subsection (o)(2)(A)—

(A) by inserting "money, gratuity, or other" before "thing of value"; and

(B) by inserting before the semicolon "and such other exceptions as may be adopted on a Governmentwide basis under section 7353 of title 5, United States Code"; and

(7) in subsection (p)—

(A) in paragraph (1) by striking out "clauses (i)-(viii)" and inserting in lieu thereof "clauses (i) through (vii)";

(B) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking out clause (i);

(II) by redesignating clauses (ii) through (viii) as clauses (i) through (vii), respectively; and

(III) in clause (i) (as redesignated by subclause (II) of this clause) by striking out "review and approval of a specification" and inserting in lieu thereof "approval or issuance of a specification, acquisition plan, procurement request, or requisition"; and

(ii) in subparagraph (B) by inserting "any individual, including an officer or employee of" after "includes";

(C) in paragraph (6)(A) by inserting "nonpublic" before "information"; and

(D) in paragraph (8)—

(i) by striking out "as the term 'designated agency official' in section 209(10)" and inserting in lieu thereof "provided under section 109(3)"; and

(ii) by striking out "(92 Stat. 1850; 5 U.S.C. App.)" and inserting in lieu thereof "(5 U.S.C. App. 6)".

(b) CRIMINAL LIABILITY.—Section 208(a) of title 18, United States Code, is amended—

(1) by inserting "(1)" before "Except as permitted"; and

(2) by adding at the end thereof the following new paragraph:

"(2) Whoever knowingly aids, abets, counsels, commands, induces or procures conduct prohibited by this section shall be subject to the penalties set forth in section 216 of this title.".

(c) REPEALS.—The following provisions of law are repealed:

(1) Sections 2397, 2397a, 2397b, and 2397c of title 10, United States Code.

(2) Section 281 of title 18, United States Code.

(3) Section 801 of title 37, United States Code.

(4) Part A of title VI of the Department of Energy Organization Act (42 U.S.C. 7211 through 7218).

(d) TECHNICAL AND CONFORMING AMENDMENTS.—(1) The table of sections for chapter 141 of title 10, United States Code, is amended by striking out the items relating to sections 2397, 2397a, 2397b, and 2397c.

(2) The table of sections for chapter 15 of title 18, United States Code, is amended by striking out the item relating to section 281.

(3) The table of sections for chapter 15 of title 37, United States Code, is amended by striking out the item relating to section 801.

(4) The table of contents for the Department of Energy Organization Act is amended by striking out the matter relating to part A of title VI.

(e) IMPLEMENTATION.—(1) No later than 180 days after the date of enactment of this Act, regulations implementing the amendments made by this Act to section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), including definitions of the terms used in subsection (f) of such section shall be issued in accordance with sections 6 and 25 of such Act (41 U.S.C. 405 and 521), after coordination with the Director of the Office of Government Ethics.

(2)(A) No officer, employee, agent, representative, or consultant of a contractor who has signed a certification under section 27(e)(1)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(e)(1)(B)) before the effective date of this Act shall be required to sign a new certification as a result of the enactment of this Act.

(B) No procurement official of a Federal agency who has signed a certification under section 27(l) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(l)) before the date of enactment of this Act shall be required to sign a new certification as a result of the enactment of this Act.

(3) Not later than May 31 of each of the years 1992 through 1996, the Inspector General of each Federal agency (or, in the case of a Federal agency that does not have an Inspector General, the head of such agency) shall submit to Congress a report on the compliance by the agency during the preceding year with the requirement for the head of the agency to identify certain procurement positions under section 27(f)(3) of the Office of Federal Procurement Policy Act (as added by subsection (a)).

(f) EFFECTIVE DATE.—(1) The amendments made by subsections (c) and (d) of this Act shall be effective on and after the date of enactment of this Act.

(2) The amendments made by subsections (a) and (b) of this Act shall be effective on and after 180 days after the date of enactment of this Act.

(3) Subsection (f) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)) shall have no force or effect during the period beginning on May 31, 1991, and ending 180 days after the date of enactment of this Act.

PROCUREMENT ETHICS SIMPLIFICATION AMENDMENT

Mr. LEVIN. Mr. President, this amendment addresses a series of overlaps and inconsistencies in our procurement ethics statutes. This amendment would retain important procurement safeguards while making the law clearer and easier to understand. I would like to thank the cosponsors of the amendment, Senators GLENN, BINGAMAN, COATS, and COHEN, for their indispensible assistance in addressing these difficult issues.

There is no doubt that we need strong procurement safeguards. Over the last decade, the public's faith in the integrity of our procurement system has been shaken by numerous cases of improper conduct. We in Congress responded by reforming the procurement process and adding new ethics provisions to the procurement code.

Although each of these new provisions, standing alone, addresses a specific ethics issue, the cumulative effect of such provisions has resulted in a complex series of overlapping and sometimes redundant requirements. Some of the resulting problems are described in the joint statement of sponsors of this amendment, which I ask be inserted in the RECORD following my statement.

While it is important to weed out duplication and conflicting provisions, it is even more important to retain hard won and needed ethics provisions. Statutory simplification is a desirable goal, but when the statutes to be simplified safeguard the integrity of our procurement system, they must be addressed with the utmost care.

Mr. President, when the issue of procurement ethics simplification came up at this time last year, I stated that this issue was too important to be addressed without public hearings at which all parties concerned would have an opportunity to be heard. I also stated my intent to hold public hearings and mark up a procurement ethics simplification bill in the Governmental Affairs Committee.

On February 26, the Subcommittee on Oversight of Government Management, which I chair, held hearings on the procurement ethics statutes. The subcommittee heard testimony from

witnesses representing the Office of Federal Procurement Policy, the Office of Government Ethics, the Justice Department, the Computer and Communications Industry Association, the Professional Services Council, and AT&T Federal Systems Division. Additional testimony for the record was received from several Members of Congress, top procurement officials at the Department of Defense, the Department of Energy, NASA, and the General Services Administration, several inspectors general, the Federal Bar Association, the National Security Industrial Association, the Electronic Industries Association, the Aerospace Industries Association, the Computer & Business Equipment Manufacturers Association, the U.S. Chamber of Commerce, the Software Publishers Association, the American Consulting Engineers Council and several major defense contractors.

The amendment that is before us today is the product of those hearings and of lengthy consideration by the members and staff of the Senate Governmental Affairs and Armed Services Committees. Following our hearings, draft legislation was prepared by the staff and circulated to key personnel in the executive branch and the private sector. Over the last several months, we have received extensive comments on this draft from administration officials and contractor groups, including those who participated in the subcommittee hearing. Unfortunately, this process took so long that we have not had time to go through the process of a formal markup in the Governmental Affairs Committee as I had hoped.

Mr. President, action on this issue should not be delayed any further. Our hearings showed that we have a hodgepodge of overlapping procurement ethics laws that confuse more than they clarify. Let me explain.

The procurement ethics laws include the governmentwide procurement integrity statute (41 U.S.C. 423), the DOD procurement ethics statutes (10 U.S.C. 2397, 2397a, 2397b, and 2397c), the so-called military selling statutes (18 U.S.C. 281 and 37 U.S.C. 801), and the DOE ethics statutes (42 U.S.C. 7211–7218). Each of these statutes imposes a complex set of requirements on Federal procurement officials and contractors.

Starting with the procurement integrity statute, this law covers any government official who participates personally and substantially in a procurement. Such procurement officials are prohibited from: First, discussing future employment with a competing contractor; second, soliciting or accepting gratuities from competing contractors; or third, disclosing inside information on the procurement.

These restrictions apply from the time the procurement begins until the time the contract is awarded. A recusal provision was added to the law in 1989, authorizing procurement officials who wish to discuss future employment with a contractor to do so after recusing themselves from future involvement in the procurement.

The statute contains similar prohibitions on contractor employees, who may not: First, discuss future employment with procurement officials; second, offer gratuities to procurement officials; or third, solicit or accept inside information on the procurement.

In addition, the statute prohibits any government official who participates personally and substantially in the award of a contract from working on that same contract for the contractor for a period of 2 years. Work for certain subcontractors is also prohibited, under a complex compromise worked out in 1989.

All procurement officials for both the government and the contractor are required to certify—on a once-in-a-lifetime basis—that they understand the statute and intend to comply. In addition, every time the government enters a contract for more than $100,000, one responsible government official and one responsible contractor official are required to disclose all violations or possible violations of the statute, or to certify that they are not aware of any such violations or possible violations.

The procurement integrity statute includes a wide range of possible penalties, including: First, civil penalties of up to $100,000 for individuals and $1,000,000 for companies; second, contractual penalties, including termination for default or the withholding of profits payable to the contractor; third, administrative actions including suspension and debarment; and fourth, criminal penalties for willful violations of the inside information requirements.

The DOD procurement ethics statutes place overlapping, and sometimes inconsistent, requirements on DOD procurement employees.

Title 10, United States Code, section 2397a requires DOD officials who participate in the performance of a procurement function on a DOD contract to report contacts with the contractor regarding future employment opportunities promptly to their supervisors. DOD officials are required to recuse themselves from all participation in procurement functions relating to the contractor for any period for which the future employment opportunities have not been rejected. Penalities for violating this provision include administrative fines of up to $10,000 and disqualification from employment with the contractor for a 10-year period.

Title 10, United States Code, section 2397b prohibits former DOD employees from accepting compensation from a contractor for a 2-year period after leaving DOD if:

A majority of the person's working days over the 2 years prior to leaving DOD were in a procurement function at the contractor's facilities;

A majority of the person's working days over the same 2-year period were spent in a procurement function relating to a major defense system and included personal and substantial participation in decisionmaking responsibilities; or

The person acted as one of the primary representatives of the United States in the negotiation of a contract or claim in excess of $10 million.

The provision includes civil fines of up to $500,000. In addition, Title 10 United States Code, section 2397c prohibits major defense contractors from hiring former DOD employees in violation of section 2397b.

The military selling statutes place yet another set of requirements on former military officials: Title 18, United States Code, section 281 prohibits retired military officers from representing any person in the sale of anything to the service for which he or she is retired for a period of 2 years. The provision provides for criminal penalties of up to 2 years in prison and fines of up to $250,000, and Title 37 United States Code, section 801 prohibits retired military officers from selling, contracting, or negotiating to sell any supplies to any DOD organization for a period of 2 years. This provision provides for the forfeiture of retirement pay for any period during which a retired officer engages in prohibited activities.

Finally, the DOE statutes place a different and unique set of ethics restrictions on DOE employees only: Title 42 United States Code, section 7215(a) establishes a 1-year ban on DOE supervisory employees contacting their former agency; Title 42 United States Code, section 7215(b) requires former supervisory DOE employees to report any employment by energy firms within 2 years after leaving DOE.

Title 42 United States Code, section 7216 requires new DOE supervisory employees who were formerly employed by energy concerns to recuse themselves for a period of 1 year from matters in which their former firms have an interest or in which they participated personally and substantially on behalf of the firm. Associated disclosure requirements are codified at Title 42 United States Code, sections 7214 and 7217.

The problems caused by this overlapping array of statutes are discussed in detail in the joint statement of sponsors, which also explains how we have chosen to address these issues.

However, the confusion created by these statutes has been compounded by the fact that they have been amended, modified, suspended, and reinstituted on numerous occasions over the last several years. The procurement integrity law, for example, was enacted in November 1988, went into effect for 4

months in the summer and fall of 1989, was substantially amended in November 1989, then suspended in December 1989, and came back into effect in two stages in November 1990 and May 1991.

Because there has never been a Senate committee report on the procurement integrity law, I would like to give a brief history of how that statute was enacted and has been amended over the past several years.

The procurement integrity provision was drafted by the House Government Operations Committee in 1987 to address issues identified by the committee in investigations of procurement problems at the General Services Administration and the Social Security Administration. The provision was added to the House version of the OFPP Reauthorization Act, which was then pending.

The Senate version of the OFPP bill did not include a procurement integrity provision. When the two bills were reconciled in 1988, the Senate accepted the House provision, with the following major changes:

First, a provision requiring the automatic suspension and debarment of any contractor violating the statute was dropped in lieu of civil, contractual and administrative penalties;

Second, certifications at the time of contract award were limited to one government official and one company official (instead of every government or contractor official who participated in the procurement);

Third, a threshold of $100,000 was added to the certification provision; and

Fourth, several definitions were modified and tightened.

The Office of Management and Budget and the Defense Department sent letters to the Congress stating that these changes addressed their concerns and that they had no objection to the legislation, as amended.

Almost as soon as the legislation was passed, however, contractors and Federal employees began to express concerns. Allegations were made that the revolving door and employment discussions provisions would make some Government officials unemployable outside the Government and that a mass exodus would take place before the statute went into effect. Rumors circulated—and later proved to be unfounded—that the biggest government contractors would stop hiring former agency employees.

Some contractors stated that the prohibition on the disclosure of inside information on procurements would chill communication between Federal agencies and contractors, making it impossible for agencies to receive technical information and refind their requirements. Others took the position that the requirements of the statute were unclear and that substantial confusion and uncertainty would result.

The statute provided 6 months for the executive branch to draft implementing regulations before the statute went into effect. After considerable confusion and delay, the first draft of proposed regulations was published for public comment on the eve of the implementation date. Because of this notice problem, Senator GLENN introduced a bill—which was passed by unanimous consent in both the Senate and the House—to delay implementation of the statute for 60 days to allow time for training. The 60-day period expired on July 16, 1989, at which time the statute went into effect.

At the same time, industry and government officials continued to raise concerns about the scope of the statutory prohibitions. Many of these concerns were based on misconceptions about the statute, which the implementing regulations failed to clear up. Accordingly, Senators GLENN, ROTH, NUNN, WARNER, LEVIN, COHEN, BINGAMAN, and WALLOP sent a letter to the administrator of the Office of Federal Procurement Policy in June 1989, raising 10 specific issues about the interpretation of the statute and requesting the issuance of additional regulatory guidance on these points.

By letter dated July 20, 1989, OFPP stated that it was contemplating regulatory changes to address six of the issues. On the other four issues, OFPP declined to take any further regulatory action, because it felt that such action was either unnecessary or precluded by the language of the statute.

Because the OFPP letter failed adequately to address the concerns raised by the Senators, legislative action was taken. First, the Armed Services Committee included a provision in the DOD authorization bill which would have addressed the problems identified by the Senators for DOD only. Subsequently, Senators GLENN, LEVIN, BINGAMAN, and WALLOP worked out a governmentwide substitute to this provision, which was adopted on the Senate floor. This amendment was accepted by the House in conference, with some changes.

The amendment was signed into law as part of the DOD authorization bill on November 29, 1989. As enacted, this amendment addressed concerns raised by administration and contractor officials as follows:

First, procurement officials were permitted to discuss future employment with contractors after recusal;

Second, the revolving door provision was amended to: incorporate a knowing standard for violations; limit the number of subcontractors covered by the provision; and authorize the President to grant waivers in certain narrowly defined circumstances.

Third, the scope of the statute was clarified by giving the terms "procurement official" and "during the conduct of a procurement" precise statutory definitions; and

Fourth, agency ethics officials were required to give written advice on the application of the statute.

At the same time that these problems were being addressed in the conference on the DOD authorization bill, the Ethics Reform Act was proceeding on a separate track. In March 1989, the President's Commission on Federal Ethics Law Reform issued a report which recommended, among other things, the repeal of the procurement ethics statutes. At about the same time, the Senate Majority and Minority leaders convened separate ethics task forces to take an independent look at the ethics laws.

On November 15, 1989 separate ethics reform bills were introduced in the Senate (S. 1882) and the House (H.R. 3660). Neither bill addressed the procurement ethics statutes, which had been considered and amended in the DOD conference which ended one week earlier.

In the course of negotiations with the House leadership, administration officials insisted on the complete repeal of the procurement ethics statutes, without regard to the amendments that had just been passed with administration approval. The House acceded in this demand, and the bill was sent to the Senate with a repealer include.

After further negotiations on the Senate side, the administration settled for a 1-year suspension of the statutes in lieu of the repealer. The Ethics Reform Act went into effect on December 1, 1989, and suspended the procurement ethics statutes until November 30, 1990.

The suspension of the statutes provided a 12-month window for critics of the statute, including the administration, to make their case and propose alternative approaches. However, disputes, within the executive branch delayed the submittal of an administration proposal until June 20, 1990. By the time the administration requested a hearing on this proposal, in late July, less than 3 months remained in the session.

The administration proposal, introduced as S. 2775 in the 101st Congress, would have:

First, repealed 10 U.S.C. 2397, 2397a, 2397b, and 2397c, 18 U.S.C. 281, and 37 U.S.C. 801 (the DOD procurement ethics statutes);

Second, repealed 42 U.S.C. 7214–7216 (the DOE procurement ethics statutes);

Third, repealed the Procurement Integrity law, except for the sections dealing with inside information; and

Fourth, modified the inside information provision to: Exclude sole source procurements from the provision; make it more difficult to prove an inside information offense; and reduce the penalties for such offense.

The Senate Armed Services Committee sought in address the elements of the administration proposal within its

jurisdiction by repealing the DOD procurement ethics statutes as a part of the DOD administration Act. Members of the Governmental Affairs Committee felt, however, that the issues at stake were too important to be addressed on a piecemeal basis without a public hearing.

Accordingly, I offered an amendment on the Senate floor to extend the suspension of the procurement ethics statutes for an additional 6 months. In conference with the House, the 6-month suspension was limited to the DOD and DOE statutes and the revolving door provision of the procurement integrity law. Consequently, the procurement ethics statutes have gone back into effect in two stages, on December 1, 1990, and May 30, 1991.

Since that time, my subcommittee has held hearings, and we have received extensive comments from the executive branch and the private sector on these issues. I would like to thank the many dedicated Federal officials and contractor representatives who worked with us on this issue for their help in understanding and addressing the difficult questions raised by these laws.

I would also like to thank my own staff and the staffs of the Governmental Affairs Committee and the Armed Services Committee for their many hours of work on this issue. In particular, this amendment would not have been possible without the efforts of Linda Gustitus and Peter Levine of my subcommittee staff, Lorraine Lewis, Tom Sisti, and Marvin Doyal of the Governmental Affairs Committee staff, and Andy Effron, Jon Etherton, and Geary Burton of the Armed Services Committee staff.

Mr. President, it is time we addressed the redundancies and inconsistencies in these statutes once and for all. The confusion caused by the existing law and repeated efforts to change it is unfair to the Federal workers who must abide by these laws, and it is unfair to the public, which relies on these laws to ensure the integrity of the procurement system.

The record is clear that we need strong procurement ethics laws. The record is also clear that we need to streamline and simplify these laws. I believe that the joint statement of sponsors makes out a strong case for the specific changes proposed in my amendment. We should address these problems once and for all, so that Federal workers and contractors know what the law is and can abide by it.

Mr. President, my amendment would streamline the procurement ethics laws, while retaining vitally needed safeguards. It is the product of many months work and responds to many of the suggestions and concerns that were raised at the subcommittee hearings and in subsequent discussions with administration officials and contractor representatives. I hope that my colleagues will join me in supporting this important initiative.

I ask unanimous consent that the joint statement of sponsors be printed in the RECORD.

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

JOINT STATEMENT OF SPONSORS

The procurement ethics laws include the government-wide Procurement Integrity statute (41 U.S.C. 423), the DOD procurement ethics statutes (10 U.S.C. 2397, 2397a, 2397b, and 2397c), the so-called "military selling statutes" (18 U.S.C. 281 and 37 U.S.C. 801), and the DOE ethics statutes (42 U.S.C. 7211-7218). Together, these provisions address the disclosure of inside information, the revolving door, discussions of employment with contractors, and gratuities.

While there is no doubt that we need strong procurement safeguards, these laws have been criticized by contractors and by administration officials as complex, inconsistent, and sometimes redundant. That is because although each ethics provision, standing alone, addresses a specific ethics issue, the cumulative effect of such provisions has resulted in a complex series of overlapping and sometimes outdated requirements. For example—

10 U.S.C. 2397a, which was enacted in 1985, requires DOD officials to recuse themselves from procurement matters before discussing employment with affected contractors. The government-wide Procurement Integrity Act, which was passed three years later, also requires recusal, but with somewhat different conditions and procedures.

10 U.S.C. 2397b, which was enacted in 1986, prohibits certain former DOD procurement employees from going to work for certain contractors. The Procurement Integrity statute prohibits a somewhat different (but overlapping) group of former employees from going to work for a somewhat different (but overlapping) group of contractors.

Section 201 of the criminal code and section 7353 of Title 5 both restrict the acceptance of gratuities by government officials, with certain narrow exceptions. The Procurement Integrity law also restricts the acceptance of gratuities, with a different set of exceptions.

Section 207 of the criminal code restricts former federal officials from contacting their old offices. Section 281 of Title 18 and section 801 of Title 37 contain different restrictions for one category of officials—retired uniformed military officers.

The amendment we propose today strives to consolidate the procurement ethics provisions in a single section of the U.S. Code in a manner that is consistent with the goal of enhancing public confidence in the fairness of government procurement practices. The proposed amendment treats all federal employees as uniformly as possible while recognizing the unique history and problems with regard to procurement officials. It would eliminate all of the DOE and DOD unique statutes. It would retain the Procurement Integrity law, with amendments intended to clarify the provision and make it more consistent with other uniform statutory requirements.

This approach should make the ethics laws simpler and easier to comply with, without in any way undermining the important safeguards they provide.

A. Employment Discussions. There are three separate, overlapping provisions in existing law, each of which addresses the issue of employment discussions by procurement officials. These are:

18 U.S.C. 208 (the basic executive branch conflict of interest provision) which prohibits executive branch officials from participating personally and substantially in any matter while negotiating for prospective employment with a party who would be affected by the outcome.

41 U.S.C. 423 (the Procurement Integrity law), which prohibits government procurement officials from discussing employment with contractors during the conduct of a procurement, unless a recusal is approved in accordance with regulations.

10 U.S.C. 2397a, which requires DOD officials who participate in the performance of a procurement function on a DOD contract to report employment offers to their supervisors and recuse themselves from procurement functions relating to the contractor for any period for which the future employment opportunities have not been rejected.

Although the Justice Department has testified that it takes an expansive view of the term "negotiations" in section 208, the case law indicates that section 208 fails to cover job discussions by procurement officials. This deficiency cannot be corrected by amending section 208 to cover all job discussions, because this approach could have the effect of making it criminal even to mention a job possibility to a federal official. For this reason, the proposed amendment would retain both section 208 and the employment discussions component of the Procurement Integrity law. Section 2397a and the associated recordkeeping requirements in 10 U.S.C. 2397 would be repealed as redundant.

The proposed amendment would revise section 208, to add a provision covering persons who aid or abet violations. The addition of a specific aiding and abetting provision to section 208 is intended to put private parties on notice that they may be found culpable if they participate in improper discussions, negotiations, agreements, and other prohibited conduct by government employees. This is not a substantive change to existing law, as the general aiding and abetting provision (18 U.S.C. 2(b)) already covers such offenses.

The proposed amendment would also revise the Procurement Integrity provision on employment discussions as follows—

The amendment would streamline the recusal provision and ensure that the option of recusal will be available to procurement officials who have only a minor involvement in lengthy contract negotiations.

It would require that all recusal requests and approvals be made available to the public, subject to classification requirements. This provision is in no way intended to affect the availability of information to the Congress, the Comptroller General, the boards of contracted appeals and the inspector generals of Federal agencies, as set out in subsection (n) of the law.

The approach taken by this amendment should assure uniform treatment of all procurement officials and eliminate confusion caused by the overlap of existing provisions applying to procurement officials.

2. Restrictions on Contractor Employment. There are also three separate revolving door provisions in existing law, dealing with contractor employment for different, but overlapping categories of former government procurement officials. These are:

41 U.S.C. 423 (the Procurement Integrity law), which prohibits any government official who participates personally and substantially in the award of a contract from working on that same contract for the contractor

or certain subcontractors for a period of two years.

10 U.S.C. 2397b, which prohibits former DOD employees from accepting compensation from a contractor for a two-year period after leaving DOD if he or she acted as one of the primary representatives of the United States in the negotiation of a contract in excess of $10 million or spent a majority of his or her working days over a two year period in a procurement function relating to a major defense system of the contractor.

42 U.S.C. 7216, the reverse revolving door provision for DOE employees, which requires new DOE supervisory employees to recuse themselves for a period of one year from matters in which their former firms have an interest or in which they participated personally and substantially on behalf of the firm.

As the DOD Inspector General concluded in prepared testimony for the Senate Governmental Affairs Subcommittee on Oversight of Government Management, the complexity of these overlapping statutes creates real problems for federal employees:

[T]he current patchwork of post-government employment restrictions are complex and confusing. The multiplicity of restrictions create unnecessary anxiety among employees and former employees that they might inadvertently violate them. . . . It is not uncommon to find employees confused about which provisions apply to them, even after training or counseling. A change in jobs or a change in status can result in a change in applicable restrictions.

The proposed amendment would address these problems by repealing all three overlapping provisions and replacing them with a single, comprehensive revolving door provision. The new provision would have a clearly defined scope, would apply equally across the board to officials in all agencies, and would carefully balance the risk of potential conflicts of interest against the interest of federal workers in future employment possibilities.

The proposed amendment would apply only in cases when a covered federal employee exercises significant ongoing decisionmaking authority, or engages in repeated direct contact with a contractor or subcontractor, on matters relating to a major contract, subcontract, or claim. The provision would be more certain as to its applicability than any previous revolving door provision, because it would apply only to officials serving in designated covered positions. All positions with substantial responsibility for ongoing discretionary procurement functions on major contract actions must be designated in writing by the agency head.

At the same time, the amendment would treat all federal workers alike, regardless of grade or pay level, and regardless of the department or agency in which such officials may work. The amendment avoids the approach taken by the existing procurement integrity provision—which is limited to agency officials who participate in pre-award decisions, because contract decisions that follow the award of a contract may be at least as significant as pre-award decisions.

Similarly, the amendment avoids the approach taken by the existing DOD revolving door statute—which is limited to officials at a GS–11 or 0–4 level or higher—both because such a limitation arbitrarily excludes lower level officials who exercise similar responsibility and because the use of such grade levels may create the impression that all officials above such levels are intended to be covered, regardless of their actual role in contract decisions. In addition, arbitrary cut-offs based on grade or pay level are unnecessary in light of the greater certainty resulting from the designation of covered officials in writing.

Finally, the amendment takes a middle ground between the contract-specific employment ban in the current Procurement Integrity statute and the total, two-year ban on employment in the existing DOD revolving door provision. Instead, the amendment contains a one-year, division-specific employment prohibition on covered officials who trigger the provision. In other words, such officials would be prohibited from accepting employment with the division or affiliate involved in the negotiation or performance of the contract at issue (or any other division or affiliate that produces the same or similar products), but could accept employment with other divisions or affiliates of the same contractor. The limitation on employment with divisions or affiliates that produce the same or similar products is intended to preclude contractors from creating new divisions or affiliates, or creating arbitrary distinctions between divisions or affiliates, to avoid the impact of the statute.

3. Post-Employment Statutes. In addition to the employment discussion laws and the revolving door laws, there are several statutes limiting contacts between former government officials and their old offices. These include:

18 U.S.C. 207, the government-wide post-employment lobbying provision, which includes one-year, two-year and life-time bans prohibiting various categories of officials from contacting their former offices.

42 U.S.C. 7215(a) (enacted before section 207), which establishes a similar one-year ban for DOE supervisory employees contacting their former agency, but has a slightly different scope of coverage.

18 U.S.C. 281, which prohibits retired military officers from representing any person in the sale of anything to the service from which he or she is retired for a period of two years.

37 U.S.C. 801, which requires retired military officers who sell, contract, or negotiate to sell any supplies to any DOD organization within two years of departure from the military to forfeit retirement pay for the period during which they engage in such activities.

The Congress recently redrafted section 207 as a part of the Ethics Reform Act of 1989. The redrafted section 207, which applies on a government-wide basis, received extensive consideration in two consecutive Congresses, and constitutes Congress' carefully considered judgment as to the appropriate limitation on contacts between former government officials and their old offices.

The DOE statutes, which preceded the enactment of section 207 and their more recent revision, and are now obsolete. The military selling statutes single out one group of former officials on the basis of who they are, not what they did. These statutes also overlap in a complex manner, unnecessarily complicating ethics advice. The proposed amendment would repeal the DOE statutes and the military selling statutes, and rely upon the single, government-wide standard of section 207 for all former government officials.

4. Gratuities. The Procurement Integrity statute prohibits procurement officials from soliciting or accepting gratuities from competing contractors (and vice versa) during the course of a procurement. Other applicable provisions include the criminal gratuities provision in 18 U.S.C. 201 and the civil gratuities provision (5 U.S.C. 7353) that was added in the Ethics Reform Act.

The Procurement Integrity statute appears to be inconsistent with the government-wide gratuities statutes, in that it makes no provision for exclusions (other than a single de minimis standard). For example, the Administration has argued that gifts from relatives, which are permitted under the government-wide statutes, could be prohibited under the Procurement Integrity statute.

On the other hand, the Procurement Integrity provision adds to the government-wide gratuities statutes in the area of penalties and enforcement. unlike the government-wide statutes, the Procurement Integrity law requires certifications of compliance (in connection with every contract in excess of $100,000) and provides a wide range of administrative and contractual remedies.

Accordingly, the amendment would retain the gratuities provision in the Procurement Integrity statute with its special remedies, but would amend the definition of gratuities in that statute to ensure that it is consistent with the definition in other government-wide provisions. Reasonable exceptions to the definition of gratuities—such as an exception covering gifts from relatives—would be acceptable, but only if they are adopted on a branch-wide basis pursuant to the provisions of 5 U.S.C. 7353.

Several contractor representatives have complained about the treatment of vendor promotional training as a gratuity under this provision. It is the view of the drafters of this amendment that vendor promotional training need not be viewed as an impermissible gift to the individual trainee. As the Director of the Office of Government Ethics stated in a letter dated March 21, 1991,

". . . vendor promotional training, when properly accepted, constitutes a gift to the agency rather than the employee. The Ethics Reform Act of 1989 added new Government-wide authority for agencies to accept from non-Government sources "travel, subsistence, and related expenses with respect to attendance of the employee (or the spouse of such employee) at any meeting or similar function relating to the official duties of the employee."

It is expected that the administration, in consultation with affected parties, will draft guidelines for the acceptance of vendor promotional training by an agency in appropriate circumstances. Such regulations should include only those circumstances in which the primary benefit is to the agency, rather than the individual.

5. Inside Information. The inside information fills a significant gap in the previously existing procurement ethics laws. Several contractor and administration officials have expressed concern with specific aspects of the implementation of the inside information provision, however.

For example, the National Security Industrial Association [NSIA] and Electronic Industries Association [EIA] stated in a letter to the Subcommittee on Oversight of Government Management:

There is a growing tendency within the federal marketplace to stifle legitimate contractor-government communications, thereby prohibiting government access to current information on the latest product capabilities of high-technology companies. This tendency inhibits agencies from freely performing CICA-mandated procurement planning and market research. We do not believe that this was the intention of the Congress.

Similarly, NASA's Assistant Administrator for Procurement told the Subcommittee that "the dimunition of effective and complete communications of necessary and

proper information between the Government and our counterparts in industry concerning acquisition planning and development of tehnical requirements appears to be responsible for increased procurement leadtimes."

As the NSIA/EIA letter indicates, nothing in the Procurement Integrity law requires any such impairment of communication of technical requirements in the pre-proposal stage of an acquisition. The statutory definition of source selection information includes only information "the disclosure of which would jeopardize the integrity or successful completion of the procurement concerned," as further defined in implementing regulations. The implementing regulations itemize specific categories of source selection information, and these categories do not include technical information on product requirements. Moreover, any problem with the regulatory definition of source selection information may be addressed through regulatory changes, without the need for statutory change.

A second problem identified in Senate testimony is the definition of source selection information in non-competitive procurements. For example, the Administrator of the Office of Federal Procurement Policy testified that—

In competitive procurements there is a need to maintain a level playing field, so that competitors for a contract are evaluated fairly on the merits of their proposals. In legitimate non-competitive procurements, whether they be for contract award or execution of a contract modification, the focus should not be on possible unfair advantage between competitors since there are none. In those types of procurements, restrictions such as the procurement integrity provisions create inappropriate obstacles to effective communication between the negotiation parties, i.e., the government and the anticipated contractor.

However, the Administrator also noted that "some information is generated in non-competitive procurements that should be protected from disclosure. In this case, the focus should be on restricting access to information that reveals the government's bargaining position." As noted above, the procurement integrity law leaves the precise definition of source selection information to regulation, requiring only that the regulations cover any information, "the disclosure of which would jeopardize the integrity or successful completion of the procurement concerned." Again, if there is a problem with the regulatory definition of source selection information, this should be corrected through a regulatory change, not a statutory amendment.

For these reasons, the proposed amendment would not revise the inside information provision or the statutory definition of source selection information.

6. Certifications. The Procurement Integrity statute requires all government and private sector procurement officials to receive ethics training and to certify (on a "once-in-a-lifetime" basis) that they intend to comply with the law. In addition, one government official and one company official are required to certify to compliance every time they enter a contract of $100,000 or more.

The proposed amendment would retain the certification requirements with only two changes, designed to eliminate unnecessary administrative burdens.

First, contractor employee training certifications would not be required on contracts of less than $500,000. Certifications of compliance by a responsible contractor official would still be required on all contracts of $100,000 or more. However, small companies that have *no* contracts in excess of $500,000 would be able to do business with the government without the requirement to design and implement a training program to comply with this statute.

Second, procurement official training certifications would not be required for government employees who are not reasonably likely to participate in procurements in excess of the small purchase threshold (currently $25,000). This provision was included at the suggestion of Administration officials, who stated that the current law requires training programs for hundreds of federal employees who are technically procurement officials, but may do nothing more than use a government credit card to purchase gasoline.

7. The Beginning of a Procurement. The Procurement Integrity law prohibits gratuities, discussions of employment, and the release of inside information "during the conduct of a procurement." The issue of when a procurement begins has been a source of contention since the statute was first enacted; some contractor representatives have suggested that this issue be addressed by requiring the publication of a notice in the Commerce Business Daily [CBD] whenever a procurement begins.

Testimony before the Subcommittee on Oversight of Government Management indicated that the publication of a CBD notice would impose significant administrative burdens without commensurate benefits. As the Department of Defense stated in a statment for the record:

DOD processes millions of procurements each year that are subject to the Act's requirements. Publishing a start date notice for each of those procurements would overly burden the system in terms of volume alone. More importantly, there would be no apparent benefit to the government, because most of our acquisition work force does not have access to the CBD and would not, consequently, receive the intended information.

All three contractor witnesses at the hearing—representing the Computer and Communications Industry Association [CCIA], the Professional Services Council [PSC] and AT&T—agreed that CBD notices of the beginning of a procurement would not serve any useful purpose. As one witness explained, "I think most of us know when a procurement is starting. I think most people in the agencies know it as well."

For these reasons, the proposed amendment would not include a CBD notice provision. The amendment would, however, clarify the point at which a procurement begins by dropping the drafting of a specification from the list of procurement actions that define the phrase "during the course of a procurement." Instead, a procurement would begin with the earliest of several specified actions—each of which takes place at a specific point in time—such as the approval and issuance of a specification, acquisition plan, procurement request, or requisition.

8. Implementation. The proposed amendment allows a 180 day period for the issuance of implementing regulations before the revised Procurement Integrity provisions come into effect. To avoid unnecessary and expensive retraining of government and private sector procurement officials, the proposed amendment specifies that no employees shall be required to sign a new individual certification as a result of the enactment should make appropriate efforts to instruct their employees as to the changes made by the amendment.

The initial designation of covered officials under the government-wide provision on contractor employment of former procurement officials should also be completed in this period, to provide covered officials with advance notice of the applicability of this provision. The amendment provides for annual Inspector General reports to the Congress on the designation process in each agency to ensure good faith compliance with these requirements.

Because existing post-employment provisions are complex and confusing, it would be unfair to subject federal officials to their requirements during the 6 month period before the new statute goes into effect. Accordingly, the proposed amendment would repeal these statutes on a retroactive basis, effective on May 31, 1991.

EQUAL APPLICATION OF POSTEMPLOYMENT RESTRICTIONS

Mr. BINGAMAN. Mr. President, I want to congratulate Senator LEVIN for his leadership in crafting a Government-wide statute to clarify post-employment restrictions for the acquisition work force. This is a very positive step in terms of reducing the complex and overlapping nature of the statutes in this area, and should enhance our ability to attract and retain high quality persons to Government service.

In the Ethics Reform Act of 1989, Congress attempted to clarify post-service employment restrictions on Government officials by establishing uniform rules applicable throughout the executive branch. The legislation, however, did not repeal the various laws applicable to specific departments or classes of employees. Instead, those laws were suspended for a year to permit time for consideration as to whether such laws should be repealed or applied on a Government-wide basis.

Last year, in the National Defense Authorization Act for 1991, Congress extended the suspension of these laws through May 31, 1991. As noted by the conferees, this action was taken with a view toward prompt action by the 102d Congress to review and clarify these laws. No legislative action has been taken to date, and the disparate collection of laws—which primarily affect the Departments of Defense and Energy—have come back into effect.

Postemployment restrictions have an appropriate place in the structure of conflict of interest laws that enhance public confidence in the fairness of governmental practices. Such laws, however, also can have a very negative impact on the ability of Government, to attract and retain high-quality personnel. Therefore, it is essential that such laws be carefully drawn, clearly written, and fairly applied. The laws that were temporarily suspended by the Ethics Reform Act of 1989 do not meet that test.

The serious nature of the current situation has been underscored by Stephen Potts, Director of the Office of Government Ethics:

In certain areas, the ethics rules have become so complicated that, frankly, I don't

believe anyone can really understand them. Little by little, rule by rule, we have addressed a problem here, another problem there, with a quick statutory fix, stacked one on top of another until we have reached the point that even an employee who sincerely wants to follow the rules doesn't have the remotest chance of understanding them so he can follow the rules.* * *

[F]or a former DoD official, there are 10 possible restrictions. Then, if we * * * look at retired military officers who are also procurement officials, we are going to pick up a new batch of restrictions that apply to them. So, for a retired regular military officer, we end up with as many as 12 different post-employment restrictions.

In the bill reported by the Armed Services Committee, we addressed this problem in section 826 by repealing those laws applicable only to DOD and DOE. We also noted, in the committee report, that we would work with the Governmental Affairs Committee in an effort to craft a Government-wide approach to this issue. The amendment proposed by Senator LEVIN is the product of the joint effort of the Armed Services and Governmental Affairs Committees.

The amendment would leave in place the Government-wide restrictions on lobbying and related representational activities set forth in 18 U.S.C. 207, as revised by the Ethics Reform Act of 1989. It would replace the current maze of additional laws by a simplified set of standards applicable to acquisition officials.

These standards would have three key features. First, they would establish clear procedures to ensure prompt recusal of a Government official engaged in employment discussions with a private party. Second, they would provide for identification of acquisition positions involving the type of direct contract with contractors in which postemployment restrictions serve a useful purpose in terms of guarding against conflicts of interest. This would ensure that Government officials are placed on notice, when taking a position, that they are involved in the type of activities that are subject to postemployment restrictions. Finally, the amendment would establish a 1-year prohibition on working with a contractor with whom the Government official has had the types of substantial involvement specified in the statute.

These provisions would promote public confidence in the contracting process, while providing Government officials with the type of clear standards needed to obtain compliance without unnecessarily deterring high-quality individuals from Government service.

We considered adopting similar provisions for DOD officials as part of our markup of the bill in the Defense Industry and Technology Subcommittee, which I chair. At the suggestion of Mr. LEVIN, we deferred action in an effort to develop a Government-wide solution. I am pleased that our eforts have been successful. I urge the adoption of the amendment.

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

The amendment (No. 1029) was agreed to.

Mr. NUNN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1030

(Purpose: To clarify the purposes for which the Secretary of Defense may provide funds to State and local Governments under the chemical demilitarization program)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. GARN, proposes an amendment numbered 1030.

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

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

The amendment is as follows:

On page 17, line 6, insert before the period the following: ", reviewing applications for modifications of such permits and licenses, and carrying out oversight activities in relation to such permits and licenses".

Mr. WARNER. Mr. President, this amendment would clarify the discretionary authority provided to the Secretary of Defense to enter into cooperative agreements with State and local governments to assist the governments with implementation of environmental statutes. Section 107 of the committee bill would provide assistance to the States for the issuance of required permits. This amendment would provide assistance for any modifications to the permits and for oversight associated with construction and operation of chemical demilitarization facilities.

This amendment has been cleared on both sides.

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

The amendment (No. 1030) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. NUNN. Mr. President, I will yield in a moment to my colleague.

I ask unanimous consent that Suzanne McKenna, a fellow currently serving on Senator GLENN's staff, be granted the privilege of the floor during the pending DOD authorization bill.

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

AMENDMENT NO. 1031

(Purpose: To authorize the Secretary of the Navy to enter into long-term leases for family housing units at Naval Air Station Whidbey Island, WA and Dahlgren Naval Surface Warfare Center, Dahlgren, VA)

Mr. WARNER. Mr. President, I send to the desk an amendment on behalf of Senator GORTON, Senator ADAMS, Senator ROBB, and myself and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. GORTON (for himself, Mr. ADAMS, Mr. ROBB, and Mr. WARNER) proposes an amendment numbered 1031.

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

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

The amendment is as follows:

On page 322, between lines 10 and 11, insert the following:

(3) Naval Air Station Whidbey Island, Washington, three hundred units, $21,110,000, a project previously approved by the Navy.

(4) Dahlgren Naval Surface Warfare Center, Dahlgren, Virginia, one hundred fifty units, $11,000,000.

LONG-TERM LEASES FOR NAVY FAMILY HOUSING UNITS

Mr. WARNER. Mr. President, this amendment would authorize the Navy to enter into long-term leases for family housing units at two Navy installations in the United States—Whidbey Island, WA and Dahlgren, VA. These leases are a very cost-effective alternative to building new family housing.

This amendment has been cleared on both sides.

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

The amendment (No. 1031) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1032

Mr. NUNN. Mr. President, I send an amendment to the desk on behalf of Mr. BUMPERS and Mr. BENTSEN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Georgia [Mr. NUNN], for Mr. BUMPERS (for himself and Mr. BENTSEN), proposes an amendment numbered 1032.

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

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

The amendment is as follows:

On page 352, between lines 23 and 24, insert the following:

(d) RED RIVER ARMY DEPOT.—The authorization of appropriations for the Army for the Red River Army Depot, Texas, in section 2104(a)(3) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1619) is hereby transferred to the Secretary of Defense for modernization activities, construction activities, or modernization and construction activities in support of the supply distribution mission at the Red River Army Depot. The Secretary shall carry out such activities through the head of the Defense Logistics Agency.

RED RIVER ARMY DEPOT

Mr. NUNN. Mr. President, this is a technical amendment which would transfer the authority to construct logistics facilities at the Red River Army Depot in Texas which was contained in the National Defense Authorization Act for fiscal years 1990 and 1991 from the Department of the Army to the Defense Logistics Agency.

This amendment has been cleared on both sides.

Mr. BUMPERS. Mr. President, on behalf of Senator BENTSEN and myself, I am offering an amendment that transfers authority for upgrading the supply mission at Red River Army Depot in Texarkana, TX, from the Army to the Defense Logistics Agency. This amendment does not require any new authority; it merely transfers existing authority. The funds involved—$39 million—were authorized and appropriated in 1990. A similar provision is contained in the House authorization bill.

The Defense management reforms announced some months ago call for consolidation of depot supply missions. This amendment is consistent with the thrust of those reforms and makes sense. Red River Depot is an ideal location for this mission. It has good access to land, water, and air transportation.

Red River Depot has a distinguished record of service to the Army and the Defense Logistics Agency will benefit from this transfer. Red River workers performed yeoman's service during Desert Shield and Desert Storm.

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

The amendment (No. 1032) was agreed to.

Mr. NUNN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1033

(Purpose: To require the Secretary of the Navy to review the Port Chicago court-martial cases and correct records appropriately)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Georgia [Mr. NUNN], for Mr. CRANSTON, proposes an amendment numbered 1033.

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

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

The amendment is as follows:

On page 100, between lines 12 and 13, insert the following:

**SEC. 514. REVIEW OF PORT CHICAGO COURT MARTIAL CASES.**

The Secretary of the Navy shall initiate without delay a thorough review of the cases of all 258 individuals convicted in the courts-martial arising from the explosion at the Port Chicago (California) Naval Magazine on July 17, 1944. The purpose of the review shall be to determine the validity of the original findings and sentences and the extent, if any, to which racial prejudice or other improper factors now known may have tainted the original investigations and trials. If the Secretary determines that the conviction of an individual in any such case was in error or an injustice, then, notwithstanding any other provision of law, he may correct that individual's military records (including the record of the court-martial in such case) as necessary to rectify the error or injustice.

REVIEW THE PORT CHICAGO MUTINY

Mr. CRANSTON. Mr. President, the Port Chicago incident of 1944 stands as an example of the racial prejudice so prevalent in the Navy during World War II. The amendment I am offering, and which has been cleared on both sides, is an attempt to right the wrongs committed against the sailors who survived and who were caught up in this troubling episode in our recent history.

On July 17, 1944, a series of three blasts started aboard an ammunition ship at the Port Chicago naval magazine in California, injuring 390 people and killing 320 men, 202 of whom were black. The force of the explosion destroyed the depot—one of the main supply depots for the Pacific Fleet—and sank two ships. Port Chicago, which is 25 miles northeast of San Francisco, has since been acquired by the Navy, demolished, and turned into a buffer zone for the Concord Naval Weapons Station.

The cause of the Port Chicago explosion has never been determined.

Three weeks after the explosion the sailors were ordered to resume loading ammunition. Many refused to obey orders on the grounds that they had little training for such a dangerous job and because they believed their superiors were directing them to use unsafe procedures.

All the sailors loading ammunition at the port were black. All the officers directing the sailors were white.

The sailors involved were court-martialed immediately: Fifty were convicted of mutiny, sentenced to 15 years in prison and dishonorably discharged, and 208 were given summary courts-martial and sentenced to bad conduct discharges and forfeiture of pay.

Thurgood Marshall, then the chief counsel of the NAACP, came to the sailors' defense. He denounced the Navy, and according to press accounts, stated, "Negroes in the Navy don't mind loading ammunition. They just want to know why they are the only ones doing the loading. They want to know why they are segregated, why they don't get promoted."

At the end of the war, after pressure from Marshall and Eleanor Roosevelt, the 50 were released from prison and all the discharges were upgraded. However, the mutiny convictions are still a part of the record.

New information on the situation at Port Chicago and on the overall treatment of blacks in the Navy at that time, raises questions about the investigation, court martial trials, and convictions of the sailors.

A recent book entitled "The Port Chicago Mutiny," by Dr. Robert L. Allen, and two television documentaries have detailed the pervasive prejudice which surrounded this incident and the lack of concern for safety by officers who pushed the sailors to "speed up" as they competed to see which detail could load the fastest.

Legal opinions from the Congressional Research Service and private attorneys attest to Secretary Garrett's authority to conduct a review of the convictions of the sailors involved in the Port Chicago Incident. Despite these opinions and a specific request from Members of Congress last year, Secretary Garrett has denied that he is authorized to review the Port Chicago case.

My amendment not only provides for an immediate and thorough review of the court martial convictions, but it clearly states that the Secretary of the Navy has the authority to correct the inidividual military records of the 258 men convicted.

This amendment is similar to legislation I introduced earlier this year, and similar to language included in the House version of the Defense authorization bill.

Mr. President, it is only right that the men who were convicted—many of whom are now elderly—see justice served in their lifetimes.

Mr. President, I would like to thank Senator NUNN and his staff for their assistance on this matter.

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

The amendment (No. 1033) was agreed to.

Mr. NUNN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. NUNN. Mr. President, I would like to let our colleagues go home, if we are not going to be able to get a

vote on the Wirth amendment this evening. I hope I will not have to inform everyone of that about this time tomorrow night; I hope they will recall that we had an opportunity to get more done tonight, because I know the mood tomorrow night at about 9 o'clock. But if we cannot get any kind of time agreement on any amendment, and there is just no need holding people here and keeping them here until 12 o'clock every night, we do not get time agreements, that does not mean we cannot have an amendment.

I know the Senator from Louisiana is prepared to bring up his amendment and perhaps what we could do on that, since it appears it is going to take a couple hours, is that for that amendment to be debated thoroughly tonight and set the vote for beginning of business tomorrow morning.

Mr. JOHNSTON. Mr. President, if the Senator will yield, I wonder if we might have an agreement that we debate it tonight at such length as we desire, without limit, that we come in tomorrow and set aside, say, 30 minutes or 20 minutes, 10 minutes on each side, to finish it up, with the time for the vote in the morning.

Mr. NUNN. I ask the Senator from Louisiana if everyone promises to watch the debate on C-SPAN can he cut the time down to 10 minutes tomorrow so we have 5 minutes each?

Mr. JOHNSTON. I say we bring up the amendment tonight, debate it at such length as everyone wants to debate, and then tomorrow when we come in have the first 20 minutes set aside, 10 minutes on each side, followed by a vote.

Mr. NUNN. Mr. President, why do we not try to prepare a unanimous-consent request along that line? I want to discuss that with the majority leader. He wanted to get more business done tonight. In the meantime, there is no need wasting time. If I do get another time agreement, for instance, on the Wirth amendment, if the Senator from Louisiana would agree to set his amendment aside so we can go to the Wirth amendment, it is important we get that laid down tonight and debate it at least, and hopefully a vote. If we agree with that, I would be perfectly willing to begin the debate on this amendment.

Mr. JOHNSTON. Our amendment is a joint amentment between the distinguished Senator from Delaware, my colleague from Louisiana, and myself. If they are agreeable, then we could go ahead and begin debate on that one.

Mr. ROTH. Mr. President, will the Senator yield for a question?

Mr. NUNN. I yield to the Senator from Delaware for a question.

Mr. ROTH. The final work is being done on the amendment at the present time. So it cannot be called up at the moment.

Mr. NUNN. I wonder if we could lay down perhaps the Wirth amendment now, make that the pending business, and then set aside the Wirth amendment so that we could go then to the debate. I am just trying to make some efficient use of our time here.

Mr. WARNER. Will the distinguished chairman of the committee allow the ranking Republican member to check with his membership before the amendment is laid down?

Mr. NUNN. All right.

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. NUNN. 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. NUNN. Mr. President, I ask unanimous consent that floor privileges be accorded to Dan Clin who is a member of Senator CONRAD's staff.

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

Mr. NUNN. 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. BREAUX. 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. BREAUX. Mr. President, there has been a great deal of discussion about the amendments that were ready to be presented. We have an amendment which has been referred to as the Johnston-Roth-Breaux or Roth-Breaux-Johnston amendment. I am prepared now. We have it in amendment form. I would say to the distinguished chairman of the Armed Services Committee that I am ready to offer the amendment. We do not have a time agreement.

I think it is appropriate under the chairman's suggestion that if a time agreement is possible under the Wirth amendment, we would be willing to set this aside to take care of that matter under the time agreement and debate this until such time agreement on the other matter is reached, if I could offer it at this time.

Mr. NUNN. Mr. President, will the Senators prefer to have a long time agreement so we at least have some bounds on it and we could go ahead and propound that and we vote tomorrow and know that. If so, what is the time agreement? Would 3 hours accommodate both sides, evenly divided?

Mr. BREAUX. I would say from this Member's perspective that is more than an adequate amount of time. I think we can do it in less time than that.

Mr. GLENN. Mr. President, I think we can probably do it in less time than that, too. I am trying to protect other people indicating an interest to speak on it. I need 25 or 30 minutes max for myself. I would like to protect others. So I would like an hour and a half on this side.

Mr. JOHNSTON. Mr. President, I think we would have no problem at all in having the same amount of time the distinguished Senator from Ohio has, and if he is willing to shorten his time I am sure we would be willing to shorten ourselves to whatever length he says.

Mr. LAUTENBERG. Mr. President, reserving the right to object, I wonder whether the discussion we were having has been completed. I probably will not object. But I would just like to know that.

Mr. NUNN. We have not propounded a unanimous-consent request. I am waiting for the majority leader. I was inquiring. There is not pending a unanimous-consent request. I suggest the Senator get started on the debate, with the understanding I will not propound this as a request, with the understanding if we can work out a time agreement on the Wirth amendment that he offers we would be willing to set those aside.

AMENDMENT NO. 1034

(Purpose: To provide for the conveyance of closed military installations to the neighboring communities in certain cases)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX], for himself, Mr. ROTH, Mr. JOHNSTON, Mr. DECONCINI, and Mr. CONRAD, proposes an amendment numbered 1034.

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

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

The amendment is as follows:

On page 378, between lines 3 and 4, insert the following:

**SEC. 2804. CONVEYANCE OF CLOSED BASES TO NEIGHBORING COMMUNITIES.**

(a) Findings and Purposes.

(1) The Congress finds that—

(A) The Department of Defense has been directed to reduce the size and cost of the military and this can only be accomplished by closing military installations;

(B) A military installation is a part of the infrastructure of the community in which it is located and there is a long standing symbiotic relationship between a military installation and the community;

(C) The people in an impacted community have made substantial, long term investments of time, training, and wealth to support the military installations;

(D) The loss to an impacted community when a military installation is closed may be substantial and in such cases the Congress wishes to mitigate the damage to the impacted community;

(E) An impacted community knows best the needs of the community and the best

way to use available resources to meet these needs consistent with existing national priorities; and

(F) Unfettered ownership of the real property associated with a closed military installation at the earliest possible time can partially offset the loss to a community which results when a military installation is closed.

(2) Therefore, it is the purpose of this section—

(A) To benefit communities impacted significantly when a military installation located in such communities is closed by authorizing the real and excess-related personal property on which the military installations are located to be conveyed to the impacted community as soon as possible after a decision to close the military installation is made but no later than 180 days after closure; and

(B) To provide significantly impacted communities a resource which will aid in mitigating the loss incurred by the community following a decision to close a military installation and which may be used by the impacted community, as the community deems appropriate, for industrial, commercial, residential, recreational, or public uses.

(b) IN GENERAL.—(1) Notwithstanding any other provision of law, the Secretary of Defense shall convey to an eligible political subdivision or subdivisions or State all right, title, and interest of the United States in the military installation closed pursuant to a base closure law in accordance with this section and the Comprehensive Environmental Response, Compensation, and Liability Act and the Solid Waste Disposal Act as determined by the Administrator of the Environmental Protection Agency.

(2) Even if the conditions set forth in paragraph (1) have been satisfied, the Secretary shall not convey such installation if the Secretary determines that the community or communities in the area of the real property to be conveyed are not experiencing or will not experience a significant adverse economic impact as a result of the closure of that military installation.

(c) DETERMINATIONS.—(1) The Secretary must make the determination referred to in subsection (b) in the case of a military installation as soon as practicable after the installation has been identified for closure, but in any event not later than the date on which the installation is closed.

(2) In determining whether a community is experiencing or will experience a significant adverse economic impact as a result of the closure of a military installation, the Secretary shall consider such objective evidence as the following:

(A) Declining real estate values.

(B) Increasing unemployment.

(C) Loss of revenue to the State and the community.

(D) Increasing rate of business failures.

(E) Significant decreases in total personal income.

(d) ADVANCE NOTICE TO ELIGIBLE STATES AND POLITICAL SUBDIVISIONS.—As soon as practicable after a military installation has been identified for closure, but in any event not later than the date on which the installation is closed, the Secretary shall transmit to the appropriate political subdivision, communities, counties and State to which property at such installation may be conveyed pursuant to this section advance notification of the Secretary's intention to make a conveyance of that property.

(e) ELIGIBLE STATES AND POLITICAL SUBDIVISIONS.—Property at a military installation that is to be conveyed pursuant to the requirement in subsection (b) shall be conveyed to a political subdivision or subdivisions or State in the following order of priority:

(1) To a political subdivision of a State that is designated in State law to receive the conveyance of such property and accepts the conveyance.

(2) If there is no political subdivision that satisfies the criteria in paragraph (1), then to the State in which the property is located if the law of that State designates the State to receive the conveyance of such property and the State accepts the conveyance.

(3) In the case of any real property for which neither a State nor a political subdivision of a State satisfies the criteria in paragraph (1) or (2), then to one or more political subdivisions of a state which the Secretary determines, after consultation with appropriate local officials, would best serve the interests of the residents of such subdivision or subdivisions and of the State in which the property is located, providing such subdivision or subdivisions accept such conveyance.

(4) In the case of any real property for which no subdivision or subdivisions or State accept such conveyance, then the Secretary shall offer the property to other departments and agencies of the Federal government.

(f) PROPERTY TO BE CONVEYED.—In addition to the conveyance of real property to a community or State pursuant to this section, the Secretary shall convey any related personal property that the Secretary determines is appropriate for use by the recipient in connection with the recipient's use of the real property.

(g) CONVEYANCE DEADLINE.—Except as provided in subsection (h), all property to be conveyed pursuant to this section in connection with the closure of a military installation shall be conveyed within 180 days after the date on which the installation is closed.

(h) PROPERTY NOT SUITABLE FOR CONVEYANCE.—The Secretary shall sever from the real property of a closed military installation to be conveyed pursuant to subsection (b) that real property which is not suitable for conveyance and make such transfers over a period longer than that which would otherwise be permitted under subsection (g). Property is not suitable for conveyance under the following conditions:

(1) When the political subdivision or state will not accept conveyance of a part of the real property of a closed military installation; or

(2) If the administrator of the Environmental Protection Agency determines that such conveyance does not comply with the requirements of either the Comprehensive Environmental Response Compensation and Liability Act of 1980 or the Solid Waste Disposal Act; or

(3) When necessary to ensure completion of environmental restoration and mitigation projects.

(i) CONSIDERATION NOT TO BE REQUIRED.—No consideration may be required for a conveyance of property pursuant to this section.

(j) WAIVER AUTHORITY.—(1) Subject to paragraph (2), the President may waive in whole or in part the requirement to convey property at a military installation under subsection (b) if the President—

(A) determines that the continuation of the United States interest in such property—

(i) is vital to national security interests; or

(ii) the value of the base is so high that a conveyance to the political subdivision or state would constitute an undue windfall to the community and would not be necessary for the economic recovery of the region, provided that the number of waivers exercised under this Act do not exceed a cumulative total of five military installations for each package of closures approved by a commission under the Base Closure law. Provided further, a waiver in part shall not count against this limit if the value of the property reserved does not exceed 25% of the total value of such installation or if the appropriate political subdivision or state agrees with the reservation; and

(B) transmits to the Committees on Armed Services of the Senate and the House of Representatives a certification of such determinations together with the reasons for such determinations.

(2) A determination and certification in the case of the closure of any military installation shall be effective only if made before the earlier of—

(A) the date on which the installation is closed; or

(B) December 31 of the year following the later of the year in which the closure of that installation is approved by the President.

(3) The President may extend the deadline for making a determination and certification under paragraph (2) for not more than two successive periods of 90 days by transmitting to the congressional defense committees a notification of the extension before the end of the deadline or extended deadline, as the case may be.

(4) The President may withdraw a waiver under paragraph (1) in the case of any military installation. Not later than 180 days after the withdrawal of the waiver, the Secretary of Defense shall make the conveyance required by subsection (a) in accordance with this section.

(k) Continuing Responsibility of the Department of Defense.—Prior to and after any conveyance of real property of a closed military installation pursuant to this section, the Secretary of Defense in consultation with the political subdivision or state shall be responsible for the following matters:

(i) To provide economic adjustment and community planning assistance including assistance in conducting public hearings to decide the appropriate use of a closed military installation to communities near the closed military installation until such time as the economic stability of such communities is achieved, as determined by the Secretary.

(ii) To comply with the Comprehensive Environmental Restoration Compensation Liability Act of 1980 and the Solid Waste Disposal Act in consultation with the Administrator of the Environmental Protection Agency.

(iii) To continue to carry out environmental restoration and mitigation activities relating to uses made of such installation before closure.

(l) SOURCES OF FUNDING.—The Secretary may expend any funds in the Base Closure Account to carry out the responsibilities referred to in subsection (k) and the Secretary shall notify the congressional defense committees in advance of the obligation of funds for such purpose.

(m) IMPROVEMENT OF PROPERTY PENDING CONVEYANCE.—(1) Notwithstanding any other provision of law, the Secretary of Defense and the head of any other department or agency of the Federal Government may continue, on and after the applicable date referred to in paragraph (2), to obligate funds (to the extent available) for making improvements to the property that has not been conveyed that will facilitate the conveyance of the property and are consistent

with the use to be made of the property by the recipient of the conveyance.

(2) Paragraph (1) applies in the case of property at a military installation on and after the later of the date on which the closure of that installation is approved by the President.

(n) DEFINITIONS.—In this section:

(1) The term "military installation" has the meaning given such term in section 2687(e)(1) of title 10, United States Code.

(2) The term "base closure law" means the following:

(A) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 102–510; 104 Stat. 1808; 10 U.S.C. 2687 note).

(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(C) Section 2687 of title 10, United States Code.

(3) The term "base closure account" means the following:

(A) The Department of Defense Base Closure Account established by section 207(a) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(B) The Department of Defense Base Closure Account 1990 established by section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 102–510; 104 Stat. 1815; 10 U.S.C. 2687 note).

In section 2(b), amend the table of contents by inserting after the item relating to section 2803 the following new item:

Sec. 2804. Conveyance of closed bases to neighboring communities.

Mr. BREAUX. Mr. President, just briefly, because I have my colleagues who want to be heard on this, I would like to outline what we are attempting to do here.

Mr. President, we all know that the House, I think yesterday, agreed to the proposal of the President of the United States to close 35 military installations in the United States and also to realign something like 43 more. For those States—and there are about 23 or more States that are directly affected by these base closures—there is a great deal of pain and suffering that they are going to experience in the very near future. For these 23-plus States that are faced with these 35 military bases that are going to be closed, the future is very uncertain. It is like an economic atomic bomb has been dropped on these communities as they worry about the future, their jobs, their families, and what the future in fact is going to hold.

Mr. President, under the current law the way the military property is disposed of once it is declared surplus under this commission's procedures, that military installation is first of all transferred or offered to any other Federal department, any other Federal agency in the Government that thinks they may have a use for this property and could come in and get that property from the Department of Defense.

Mr. President, only after every single Federal agency says we do not want it or we do not need it, then under the current law is any public body, State and local governments, allowed to come in and make a request and show a need and a use for that property.

Mr. President, the bill that is now at the desk does something very simple. Senator ROTH offered a bill in the Senate a number of weeks ago. I cosponsored it. Senator JOHNSTON has been working on an approach. I think what we have here tonight is a combination of those efforts.

What we simply do is to say that those who suffer the most are going to be helped the most by their Federal Government. Those citizens who are going to be the most greatly adversely affected, those citizens who are going to lose their jobs are going to be put in the first tier, not the last tier, as to who is going to be helped.

This amendment, Mr. President, simply says that, in considering how that property is going to be handled, the local public bodies are going to be put at first priority, and let them have the first opportunity to use those facilities, to use that property, for the best benefit of that local community and that local government.

We have an obligation to help those who we hurt the most, and certainly it is not other departments in the Federal Government. Certainly, it is not the Department of Commerce or the Department of the Interior or the Department of the Treasury, or any other Federal installation. First priority is to help those who indeed are offended and hurt the most by this transfer.

So, Mr. President, this amendment simply reverses the order, allows the local communities, counties, and States to form a coalition to come in and make the request for use of those surplus Federal properties. And I think that is very clear. I know in our own State of Louisiana, we have an installation that is going to be closed. Ninety-five percent of the property the Federal Government owns right now was donated by the local government. It was donated for an Air Force base. And now, under the current law, without this amendment, the Federal Government is going to say: We do not need it for an Air Force base anymore, but we do not care if that is why you donated it to us; we are going to keep it, and we are going to find another use for it.

Instead of saying to those citizens that donated that property in the first place, who gave it free of charge to the Federal Government to be used as an Air Force base, instead of saying, "You are entitled to have it back now that we do not need it;" no, the current law would say: No, we are going to offer it to some other Department of the Federal Government.

Mr. President, that is wrong. Our amendment that is at the desk tonight corrects that inequity, and it does it in a way that I think is balanced, and one that makes a great deal of sense. I will have other things to say at a later date on the amendment, but I wanted to outline it at this time.

I yield the floor.

Mr. JOHNSTON. Mr. President, the substance of this amendment is to require, with respect to those bases that are closed, that there will be an obligation to the Department of Defense to convey the property of that base to the local community as soon as possible, but in no event later than the date of actual closure.

We require, Mr. President, as a trigger for the entitlement to receive that land, that there be an adverse economic impact on behalf of that community. The adverse economic impact in most instances is perfectly plain. And we determine what that significant adverse economic impact, which is the word of art that is used in this amendment, we define that as being such things as real estate values going down, unemployment going up, lost revenues to the local communities, increased bankruptcies, personal income going down. In most instances, it is perfectly obvious that the impact on the local communities will be dire, direct, substantial, and overwhelming.

For example, in central Louisiana, where England Air Force Base is located, which is due to be closed, there is a loss of 12,000 jobs; there is a loss of $228 million in sales; there is a loss of over $257 million in household income; there is a loss of State and local revenue, which is overwhelming to the local businesses; and there are bankruptcies wholesale.

In any event, Mr. President, we require as a trigger to receive this property that the local community be adversely impacted. We require that the President make findings as to that, if their really is no adverse impact, then his findings will so state and will state the facts of that.

We next deal with the question of to whom the property is to be conveyed. We provide that the first order of priority is that where State law designates a local subdivision—it may be a city; it may be a town; it may be a county; it may be a newly created local subdivision, as is the case in Louisiana—the designated party, under State law, would be the one to receive the property.

If there is no designated party under State law, then the second order of priority is the State, and if it is not appropriate for the State to determine, then the Department of Defense shall determine among the various local subdivisions which subdivision or which combination of subdivisions, including the State, is appropriate.

We provide, Mr. President, that the conveyance must be made within 180 days of closure. We had found that in many instances—for example, the distinguished Senator from Alabama, Mr. HEFLIN, was telling me that a base in

his State has been closed for over a decade, and they are still trying to get the property and they cannot get it. It is tied up, I do not know, in redtape. It is tied up in, perhaps, appraisals. But in any event, they cannot get it. We require that that conveyance be made within 180 days of closure.

We also provide that, in certain instances, conveyance would not be suitable. For example, where the local community is not willing to accept the property, or where there are environmental problems, or where there must be environmental restoration.

We do provide for a waiver. And this is very important. It is a Presidential waiver. The President may waive the requirements of making the conveyance where, first, there is an instance of national security; and second, where the value of the property is such that a conveyance of that property to the local community would constitute a windfall on behalf of the community, and would also not be necessary in order to have economic recovery for that community.

So, in those instances that you have—and there are a few that we are acquainted with—where the property is extremely valuable, then the President can make a finding simply on the basis of the high value of the property.

We also provide, Mr. President, that there may be a waiver in part. That is, the President may say that, for example, well, we will give two-thirds of the base back to the local community, but one third must be reserved for, for example, a Federal purpose, such as the National Guard using the runway, or the National Guard using the armory, or any kind of Federal use that would require a partial Federal use, partial national security use.

We do provide, Mr. President—and this is a very important exception—we provide that the total number of waivers made by the President with respect to any group of closures—by a group of closures, of course, we mean those that were just announced recently, or the second wave would be another separate group—that with respect to a group of closures, the President may not use this waiver authority for more than five bases.

We provide, however, that partial waivers do not count against the five limit. So that, for example, if the President said in England Air Force Base that we need the runway because we want to put an air guard unit in England Air Force Base, that they could reserve either the runway or the use of the runway, or the hangar or the use of the hangar, and thereby not count against the five limit, provided the value of the reserved property does not exceed 25 percent of the value of the base.

So that the President has unfettered authority on economic grounds, as I pointed out, as well as on national security grounds, to waive the requirement of having to convey these bases, provided that he can use it with only five bases, for the total base; or he can use it in addition to that, for partial waivers, provided that the reservation by the President does not exceed 25 percent of the value of the base.

We also provide, Mr. President, that the President must make clear—we set dates in this amendment for the President to make his findings and to exercise his waiver, and that if he fails to make the waiver in the time specified, then it is final.

The reason for that, and the whole thrust of this amendment, is to make it clear that this property must be conveyed, must be conveyed promptly—except in those cases where the authority is reserved. But, where that authority is reserved, the President, in effect, must make up his mind, make up his mind promptly, state the reasons, so the local community can then get on with the business of either planning for the use of that base or attempting to, for example, attract industry in to use the base, which we hope to do at England Air Force Base.

I hope this amendment will be enthusiastically accepted. To say that our local communities are adversely impacted is an understatement. We think it was outrageous what was done in central Louisiana with England Air Force Base. This would be one way to help us begin to plan to provide against the terrible impact that that has created.

Mr. WARNER. Mr. President, will the Senator entertain some questions?

Mr. JOHNSTON. Of course.

Mr. WARNER. I must say this is a fairly voluminous piece of legislation to propose at this hour on this bill, and this manager has had but a few minutes to examine it. But I must say at first glance, I think it is not a wise piece of legislation, but I will await the response of the Senator to several specific questions.

First, the Secretary is to determine (A), (B), (C), (D), and (E). That listing does not restrict him to the various factors that he can take into consideration. I presume it merely recites suggestions; is that correct?

Mr. JOHNSTON. What page is the Senator on?

Mr. WARNER. That would be page 4. "The Secretary shall consider such objective evidence as the following." He is not limited to those factors?

Mr. JOHNSTON. That is correct.

Mr. WARNER. Down to "Eligible States and Political Subdivisions." "To a political subdivision of a State that is designated in State law to receive the conveyance of such property and accepts the conveyance." How many of the 50 States now have on the books a law that would meet this provision?

Mr. JOHNSTON. Well, I do not know. I know the State of Louisiana does. Where the State legislature has acted, and the State of Louisiana Legislature acted with respect to England Air Force Base, to form a special subdivision that is composed of representatives from the City of Alexandria and representatives from Rapides parish, and where the State has acted and thought about this problem, then they ought to be the one to do it.

Where they have not, then the conveyance should be to the State if the law of the State designates the State to receive the conveyance of such property and the State accepts conveyance.

Mr. WARNER. Yes, Mr. President, I have tracked that down. But what concerns me is if there are a great many States that do not have laws that would take care of No. 1, we could end up with a situation where States would be receiving property of significant value, rather than the general taxpayer.

Mr. JOHNSTON. It says, "then to the State in which the property is located if the law of that State designates the State to receive the conveyance of such property. . . ."

Mr. WARNER. Well, I am certain most States have an omnibus statute saying they can take property, I suppose.

Mr. JOHNSTON. It does not say they can, it says if they designate the State as the one to receive the property.

Mr. WARNER. My point being there may be some communities that are deserving of receiving these properties, and could meet (A), (B), (C), (D), and (E), but there is no State law by which those communities can receive the property and the property simply leapfrogs a deserving community and goes into the State treasury.

Mr. JOHNSTON. If the Senator will read on page 5, No. 3, where the State law does not provide for someone to receive it, "then to one or more political subdivisions of the State which the Secretary determines"——

Mr. WARNER. That is the Secretary of Defense?

Mr. JOHNSTON. Right. "After consultation with appropriate local officials, would best serve the interests of the residents of such subdivision or subdivisions of the State. * * *"

Mr. WARNER. Let us stop right there. I rather imagine there would be a number of localities within the State that would be very anxious to get a valued piece of Federal property and he would be thrust into some stiff competition, would he not?

Mr. JOHNSTON. Well, the idea here is to encourage the State to make its determination. And if it does not, then the Secretary of Defense should make that. Somebody has to decide.

Mr. WARNER. Mr. President, I do not doubt the Senators from Louisiana have a serious problem with respect to a small community somewhere in their State. But what we are doing is enact-

ing—that is, looking at a law, hopefully it will not be enacted—that would apply to all 50 States, all base closures, deprive the Federal taxpayers of some, I think, estimated here 3.5 billion dollars' worth of Federal property.

I think out of a care for, perhaps, a needy situation, we are creating a miriad of problems all across the country.

For example, let us say there is a State law that allows a political subdivision of a State that is designated to receive it. Suppose that is a small town, consisting of two bars and a dance hall. Does that get a whole Air Force base that happens to be in the political subdivision?

Mr. JOHNSTON. First of all, Mr. President, the Senator from Virginia, I think, misstated what this is. It is not a community that is eligible. It is the community or subdivision which is designated by State law to receive it.

Mr. WARNER. Then I must confess not to be able to get a grasp of this. Does the Senator mean there is State law in my State now, I have no knowledge of it, that says each of the communities would get each of the military institutions should they be closed?

Mr. JOHNSTON. I am saying according to this amendment it would be up to the State legislature to determine what is the appropriate subdivision or combination of subdivisions, or if it is the State which would be designated to receive the property.

Mr. WARNER. Then what my colleague is suggesting, for each closing, a legislature has to pass a specific law and make a finding?

Mr. JOHNSTON. No. If the Senator will listen——

Mr. WARNER. I am trying to listen and trying to understand.

Mr. JOHNSTON. All right. With respect to each base that is closed, the State legislature would have the option to designate a political subdivision or group of subdivisions or, indeed, create a subdivision to receive the property or designate the State as the appropriate subdivision.

Mr. WARNER. May I stop my colleague there? Is there any nexus between the location of the base and the likelihood of the subdivisions receiving this? They would have to be ones that suffered a declining real estate value, increasing unemployment?

Mr. JOHNSTON. I would say to my dear friend, the legislature of the State is not going to designate, as the Senator says, some little Podunk town 50 miles away that has a bar and 16 residents. State legislatures—this is part of our State. I am sure in Virginia, the legislature of the State of my colleague, in the case of a closed base would not designate some foreign, disparate town that has no connection with the military base. Surely the Senator from Virginia, a strong State's righter, graduate of Washington and Lee, would not think the legislature of Virginia would do such a foolish thing?

Mr. WARNER. Mr. President, I do not wish to denigrate any State legislature, but I certainly have been witness to lots of crazy things done by State legislatures all over America.

Mr. JOHNSTON. It has never been done in Louisiana.

Mr. WARNER. Somehow it seems to me the political history of Louisiana has been getting a great deal of consideration nationwide, worldwide, in the last 2 years.

Mr. BREAUX. Will my colleague from Louisiana yield? If I could have the attention of the Senator from Virginia, maybe I can help him. Under current law, this is already done. Under current law when a military base is closed right now, the first option is the Federal Government, but if the Federal Government does not want it, then it goes to a public body as worked out by the State.

I would say to the Senator from Virginia, we have had a number of bases that have in fact been closed under the old laws that have gone ultimately to the local government, and it is a very simple thing the local country and State works out as to how it is going to be handled. Our State of Louisiana has already formed a county and State commission consisting of the local government and county and State, which would be a commission which would operate it if they were able to get it.

That is the current law right now. So we are not envisioning any change in how the local people who acquire title would be handling it. What we are trying to do is insist those who are hurt the most will have first priority of getting it. It is not a complicated process.

Mr. WARNER. Mr. President, I accept the Senator's explanation. I do have a feeling, however, that there is a close tailor between this legislation and what will soon exist by way of laws in the State of Louisiana. This is a hand-in-glove situation. I am concerned about other jurisdictions.

I see on the floor the distinguished Senator from Ohio. Maybe he has a far better grasp on this situation than the Senator from Virginia.

Mr. JOHNSTON. If the Senator will yield.

Mr. WARNER. I yield the floor.

Mr. JOHNSTON. I just tell my friend from Virginia, there may be some objections to this. I believe I can assure him that the designation in State law of a political subdivision to receive it is surely not a reason to opose this amendment.

The PRESIDING OFFICER (Mr. DASCHLE.) The Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair. Mr. President, I support the pending amendment and after listening to the colloquy between the distinguished Senator from Virginia and the distinguished Senator from Louisiana, I would like to raise my voice in support of what the Senator from Louisiana has had to say.

I believe that the base closures are going to cause tremendous impact in many communities across the country, especially in the State of Pennsylvania. I believe legislation of this type is very appropriate to try to give some relief to enable the localities to acquire this property and provide an economic base for job opportunities.

Earlier this evening, the distinguished Senator from Maine addressed the body on a related matter.

Mr. President, earlier this evening Senator COHEN of Maine spoke about changes in the pending legislation as a result of problems and inappropriate action on the Base Closing Commission. As he spoke, a number of the issues which had troubled the State of Maine were duplicated in the Commonwealth of Pennsylvania with respect to the Philadelphia Navy Yard and the Naval Air Development Center in Warminster, PA.

With respect to the navy yard, not only was there stonewalling, a characterization used by the Senator from Maine earlier this evening, but there was an actual concealment of relevant documents with memoranda from Admiral Clamon and Admiral Hekman urging the retention of the navy yard, concealed from the members. Then Under Secretary of the Navy Howard had urged Admiral Hekman not to testify before the Base Closing Commission.

Those matters are of such a serious nature that they are now part of litigation pending in the U.S. District Court for the Eastern District of Pennsylvania.

The Naval Air Development Center at Warminster, PA, was acted upon by the Base Closing Commission even before the Advisory Commission on Laboratories reacted. The statute provides for that action in September. The Base Closing Commission took action in July. Hardly sensible.

So, in the face of what had happened, there will be opportunity later for a fuller exposition on the failures of the Base Closing Commission on the resolution for disapproval, which I filed on July 10 shortly after the President approved the Base Closing Commission, that the kind of legislation offered this evening to give the localities an opportunity for industrial development for job opportunities is most appropriate.

I have an amendment which has been filed, Mr. President, which would call for extra job training for those localities as well. But I think this is a very important amendment. I urge my colleagues to support it. I thank my colleague from Ohio for yielding.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I rise to oppose the amendment before us. Let me put this in the proper perspective. This takes existing Federal law that has been working, and working well, for some 43 years. The law was passed in 1949, the Federal Property Administrative Services Act. For over 40 years, it has prescribed the way we dispose of Federal property, whether it is a military base or whether it is a building, or whatever it is.

Mr. President, it includes real estate, it includes whatever Federal property is to be disposed of. There is a regular procedure under the act and the procedure that has worked well for over 40 years says when the Federal Government owns a piece of property, it if is going to dispose of that property, that it first canvasses other Federal agencies to see whether there is any other Federal agency that has a use for that property.

Mr. President, that makes a lot of sense. That makes sense because there may be another use and if we are about to buy property, about to spend taxpayers' money for a certain purpose, it is foolish to be selling one piece of property so you can turn right around and buy another or, giving the property away, as this would propose, so we then would be required to spend who knows how much money to buy similar property to do something else the Federal Government is interested in doing. So that is the first call—other Federal use.

Only when no other Federal use is determined do we then go to the States and say does the State want this property, and we give the States priority with respect to homeless use, with a few exceptions. If they do not want it, we give the counties priority, then local communities and then, if it still is not used by a Government entity or wanted by a Government entity, the Federal Government can sell it off on an individual sale, if someone will buy it.

Mr. President, this absolutely turns that procedure upside down, this procedure that has worked for over 40 years. It says first we will just give property to the local community, and if there is not anybody there suitable to take it, the State will designate someone to take it. Does this make any sense? I think it would make a great deal more sense if my distinguished colleague from Louisiana was saying that we provide for expedited procedures to run through this so that we do not have the normal months and months of delay, because I think it would be absolutely ridiculous for the Federal Government to give up this property on such a scale to just give it up and upset the procedure that has worked well for 40 years through many base closures.

As an example, the DOD estimates it could realize, some $1.8 billion from 1988 Federal base closure sales.

Mr. President, I appreciate what goes on around these bases. I have a major base in Ohio, Rickenbacker, in Columbus which is closing. Would I like to see somebody get a gift of that? Of course. I do not see how we do that, the people of other States, the people who paid for that property, developed that property and developed that base and then turn around and say we will give it to them after this whole thing is over and upset the usual procedure.

I realize there is a great deal of unhappiness about the way the base closure action occurred and there are still people trying to take legislative action to prevent some of those things from occurring. Mr. President, there will always be concern when a base closes. We also have to realize that those States and communities reap years and years of benefit by that base being in that particular area, also.

Mr. President, the amendment would essentially turn over, at no cost, entire bases to local communities without first going through the procedure that I mentioned.

In fact, it just reverses the whole thing. It says you give it to the local communities first. The Feds would be out of it completely except—now except—and I know the distinguished majority leader has some concerns about this, too. As I see it, this would circumvent the CERCLA legislation, also. I do not see how it could help but do that. Because what it does, it says that on these bases where there are hot spots or toxic problems or whatever the difficulty is there, somehow we keep that under Federal control. We address that separately. And it is a rare base these days—perhaps England Air Force base in Louisiana does not have any toxic problems, but I can guarantee my friend from Louisiana at other places around the country, most of these bases do have some sort of environmental problem for which the Federal Government is still going to be responsible.

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. GLENN. I will yield.

Mr. JOHNSTON. Does the Senator understand that under the amendment the Secretary has the obligation to convey the real property except as provided in subsection (h). Subsection (h) in turn defines property not suitable for conveyance, and such conditions are when it is necessary to comply with the requirements of CERCLA and the Solid Waste Disposal Act.

So that the idea here is that the Secretary of Defense now has the duty to clean the property up, and that it is not suitable for conveyance where you would have to comply with that law. So our intent here is to keep the responsibility on the Department of Defense to do the cleanup.

And I think the distinguished Senator from Maine would like for EPA to make that determination. I think we are working on an amendment to make that clear, that EPA makes the determination.

So it is not our desire at all to change either the responsibility for the cleanup or to convey property that is not certified by EPA as being clean. But that property which is not affected by the pollution or the cleanup would have to be conveyed. In other words, you have a dump out back on the edge of the air base. The rest of the property would have to be conveyed and that would not be conveyed but, rather, would remain the responsibility.

I thank the Senator for allowing me to interrupt.

Mr. GLENN. I understand.

Mr. President, I repeat what I started. The Federal Property and Administrative Services Act of 1949 set up a very specific procedure that has worked well for over 40 years. It has worked well through previous base closures and other property disposal, and I see no reason why we should upset this thing and turn it right smack on its head. We start now by giving whole bases to local communities, and then work up the ladder to States or to State designees to receive the property and in effect give up whatever money might be brought back into the Federal Treasury for other purposes if we go ahead and dispose of property as has been our custom in the past.

Mr. President, there are other possible uses and they include any and all other Federal uses. We have legislation already passed that allows homeless assistance programs to apply for property on these bases. We have Red Cross donation programs, drug rehabilitation programs, prisons, many other purposes that are written into Federal law that would be violated if we passed this amendment.

Mr. President, I do not believe that adequate rationale has been given for this drastic change, and it is a drastic change, in how we dispose of our current surplus property. I am especially concerned that this matter has not been fully studied or examined by the Congress.

The effect of the amendment will be, first, to waive the Federal Property and Administrative Services Act of 1949—that is the body of laws and regulations that has controlled property disposal for over 40 years—waive the Stewart McKinney Homeless Assistance Act. It denies DOD the chance for significant land sale proceeds in the billions of dollars. We are just going to give that away. The proceeds from which could have been used for environmental restoration, closing bases, or whatever. In fact, as I said a moment ago, DOD estimates that it could realize $1.8 billion from the sale of property associated with 1988 base closings.

If this amendment is agreed to, it requires the conveyance of even personal

property. I suppose that would mean the equipment on the base, wheelbarrows, cots, blankets. I do not know exactly what would be included in that. It is not spelled out.

But I am, of course, very sensitive to and understand fully the concerns of many communities around the country about current economic difficulties, and there is an impact when a base closes. It does require a lot of readjustment. There is no denying that. Many cities and towns in my own State of Ohio are struggling under the burden of this recession. I also appreciate that base closings can prove greatly disruptive to a local community.

However, I do not think the solution to those problems is to gut the entire Federal property disposal procedure that we have operated under for so long, and more specifically to change the rules on base closure property disposal right in the middle of the game. In fact, I suspect that would only be counterproductive of the very goal we seek to achieve. What we are trying to do is save dollars. That is the overall purpose of this whole base closure episode we are going through, to save money, at the same time trying to recoup some of that back into the Federal Treasury.

As I read this particular amendment, too, there is no requirement that the community hold on to the property. The community could be designated to receive this property, and if they so desired they could sell it off. They could put it into subdivisions that could be used then by the local community to do anything they wanted.

Mr. President, these are valuable properties. These are not little fly-by-night pieces of real estate. These are major chunks of real estate. And we are just going to give them, apparently, with this amendment to the local communities to do as they see fit, or to sell off if they choose to do so.

Mr. JOHNSTON. Will the Senator yield at that point.

Mr. GLENN. Let me finish now. I yielded before. I thank the Senator. I will be done in just a moment.

So I am very sensitive to and I understand fully these concerns of the communities, but we are trying at the same time to get some money back into this Federal Treasury of ours, not give more of it away, which is in effect what we would be doing here.

Now, let me briefly outline the general reasons why I believe adopting this amendment would be a mistake in addition to what I have already mentioned. I believe my sentiment is shared by DOD in a letter to the chairman of the Senate Armed Services Committee concerning Senator ROTH's proposal, S. 1300, which I understand is virtually identical to this bill. I believe that is correct. It is a bill much like the one we are debating. I understand it is almost identical.

Here is what DOD's General Counsel says, and I quote:

> The Federal Property and Administrative Services Act of 1949, as amended, which stipulates the process and sequence of events to be followed when disposing of real property gives ample opportunity for local communities to acquire surplus property for redevelopment, subsequent to a base closure. The fact that Federal or State agencies have the opportunity to acquire the property or a portion thereof first, would not be a serious roadblock to the community since the redevelopment of a base is usually a cooperative effort undertaken in accordance with the reuse plan developed at the local level.

Mr. President, I agree entirely with this statement. Very sophisticated reuse plans and efforts are underway in communities across the country. These plans will require integration and coordination throughout the local community. To suddenly simply turn over these properties is unfair. It sends the completely wrong signal, and I think sets an extremely bad precedent.

Such a precedent flies directly in the face of what Congress intended in both the base closure laws and the McKinney Act.

Disposal of closed base property is governed by Section 204(b) of the Base Closure Act. The Secretary of Defense is delegated GSA's authority to utilize excess property and dispose of surplus property pursuant to the Federal Property Act, and grant approvals and make determinations under that surplus property act.

DOD is required to follow the Federal Property Act procedures and is expressly not permitted to "prescribe general policies and methods for using excess property or disposing of surplus property." In other words, DOD has to follow the normal GSA procedures. They are not permitted to go out on their own. Moreover, this authority is expressly limited by the McKinney Act, Title V, surplus property program over which the committee I chair has jurisdiction.

Mr. President, the law is unambiguous. Congress clearly and fully intended that the disposal of base closure property be handled in the same way it would be handled under longstanding and well-understood property act rules and procedures.

It cannot be disputed that the proposal before us would fundamentally alter this method of property disposal. It is a method that has operated well for over 40 years.

I mentioned earlier I am also concerned that other legitimate uses for such properties would be shunted completely aside in this manner. Let us say, let us suppose NIH or HHS or the Department of Agriculture needs some base closure property for some very important programs—research lab on AIDS, scientific laboratory, or one of an infinite number of other kinds of facilities.

Mr. President, could we have order in the Chamber? I am having trouble talking over the other conversations?

THE PRESIDING OFFICER. The Senate will be in order.

Mr. GLENN. As far as the process currently in place is concerned, the law explicitly defines specific steps that must be taken in order to screen excess and surplus property for such uses.

Under this amendment, no such opportunity would be provided. Right from the word go, these other very important Federal uses would not have a chance to even be considered, not to even be considered. We will end up with the debt-ridden Federal Government having to pay greatly to build or lease new facilities.

Mr. President, that is just not in the best interest of the American taxpayer, including those who reside in the affected local communities; I would submit even those who live within Louisiana.

As chairman of the Governmental Affairs Committee with jurisdiction over the McKinney homeless assistance surplus property program, I am especially concerned about the effect of this amendment on the priority which Congress has for years now attached to facilities to assist the homeless. The title V surplus property program under the McKinney Act requires the publication of surplus real property that is suitable and available for homeless use.

Already I would say some base closure property has been reported and published under this program. We had a hearing held before the Governmental Affairs Committee last year, and James Forsberg, of the Department of Housing and Urban Development, testified that:

> We have received property already under the Base Closure Act. Back in late March and early April 1990 we published, I think, around 1,500 to 2,000 properties that were coming on line as a result of the base closures—and we have found around 80 percent of that property suitable since many of the properties were in fact family housing.

In a conversation with my staff this week, one HUD official characterized HUD's relationship with DOD as "very good." Not long ago apartment buildings were turned over to nonprofit homeless providers. These buildings were part of the base closure listing of the associated housing for a base in Virginia.

In addition, at New Hampshire's Pease Air Force Base, HUD in cooperation with DOD has worked at least to see that property there is channeled fully and properly through the McKinney procedures. I do not want to see this progress stopped. That will be the effect of this amendment.

As I noted earlier, there are numerous other possible uses for base closure property which will effectively be barred by the approach of this amendment. Among these very important

uses are such things that we have passed legislation on, on this floor, regarding prisons, drug rehab centers, public hospitals, homeless facilities, educational facilities, numerous others. Of course, if all of these possible public uses have been forestalled, DOD would otherwise have the opportunity to sell this property.

DOD estimates the revenues from the sale of 1988 base closure property alone already are $1.8 billion. That is money which would be returned to directly offsetting the costs of base closure, especially the expected huge environmental cleanup costs that we discussed very briefly a little while ago.

Mr. President, apart from any of the other reasons I have cited, I am opposed to this amendment on the simple grounds that we have not examined it closely, have not looked at it, it came up suddenly, and about a day ago we first heard about it. I fully recognize that the base closures have caused an enormous problem for many hard-pressed communities and the economic viability issues are very compelling. However, such a radical proposal to change base closures property disposal——

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

Mr. GLENN. For a moment, without losing my right to the floor.

Mr. ROTH. I would like to say to my distinguished chairman that on the Roth proposal, I did testify before the subcommittee of the Senate Armed Services Committee. The legislation was referred to the Armed Services, and I also did appear before the Base Commission. So the matter has come up before. The chairman is correct. It did not go before our committee.

Mr. GLENN. Fine. I appreciate the comment. Thank you.

However, such a radical proposal to change base closure property disposal rules in the middle of the first round of closures should not be made without much further study and a real solid evidentiary record. If there have been hearings, they have been held on this subject only in a very brief way, and we have certainly not fully explored this issue after the Base Closure Commission final list came out.

As far as I know, there have been no extended hearings before my committee, and I would certainly be glad to accommodate those if that was referred to my committee. I would be glad to hold those hearings jointly with the Armed Services Committee if necessary, and as early as possible.

Mr. President, in conclusion, I must oppose this amendment not just because it seeks a change which is undoubtedly negative with respect to base closure property, but also because it is simply not fair. It is not fair to other potential users, both local and Federal. It is not fair because these other local or Federal entities would be shut out from even applying to use these facilities and to the communities where considerable efforts have been made already to plan for integrated reuse.

Once we begin down this path, Mr. President, where do we stop? Does this mean that all surplus property now, including foreclosed FHA property, RTC properties will forever now be free of any other possible legitimate uses? Will homeless uses simply be consigned to the lowest possible rung? I cannot support taking such precipitous action with such far-reaching implications in this manner.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from DOD on S. 1300, the Roth bill.

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

GENERAL COUNSEL OF THE
DEPARTMENT OF DEFENSE,
*Washington, DC, July 30, 1991.*

Hon. SAM NUNN,
*Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Secretary of Defense on S. 1300, 102d Congress, a bill "To minimize the adverse effects on local communities caused by the closure of military installations."

S. 1300 is intended to benefit the local community impacted when an installation is closed by authorizing the installation's real property to be conveyed to that community as soon as possible after a decision is made to close the installation.

This legislation would significantly change the disposition process for real property associated with a closed military installation. It would require the Administrator of the General Services Administration (GSA) to offer to transfer title to the property to the local community concerned first, then to county, State, and finally Federal agencies. If the property is not requested by any of these agencies, it can than be sold to the highest bidder. The bill does not state specifically that such transfers would be without consideration but it is assumed that such is the case.

The Department of Defense opposes the legislation. The Federal Property and Administrative Services Act of 1949, as amended, which stipulates the process and sequence of events to be followed when disposing of real property, gives ample opportunity for local communities to acquire surplus property for redevelopment, subsequent to a base closure. The fact that Federal or State agencies have the opportunity to acquire the property or a portion thereof first, would not be a serious roadblock to the community since the redevelopment of the base is usually a cooperative effort undertaken in accordance with a reuse plan developed at the local level. It is highly unlikely that a Federal or State agency would acquire a portion of a base and use it for something that the local community strongly opposes. By not specifying that transfers of property will be at fair market value, it is assumed otherwise, that transfers will be without consideration. This subverts the intent of Congress in both base closure acts, P.L. 100-526 and P.L. 101-510. The proceeds from the sale of base closure property are to be placed in the Base Closure Account and used to finance ongoing base closure costs. Without this infusion of funds, additional appropriations would be required which could delay closure schedules and realization of savings. The Department of Defense has invested considerable sums of money in these installations and it would not be in the taxpayers' best interest to give away these valuable assets. The legislation is also silent on other statutes that affect the disposal of real property, such as the Stewart B. McKinney Homeless Assistance Act. This Act requires that suitable and availabe surplus property be made available to providers of assistance to the homeless when such a request is made. S. 1300 also does nothing to resolve environmental problems. These issues take the longest to clear up and therefore slow down the disposal process.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

TERRENCE O'DONNELL.

Mr. GLENN. I will quote from parts of that letter. It starts out:

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would be required which could delay closure schedules and realization of savings. The Department of Defense has invested considerable sums of money in these installations and it would not be in the taxpayers' best interest to give away these valuable assets. The legislation is also silent on other statutes that affect the disposal of real property, such as the Stewart B. McKinney Homeless Assistance Act. This Act requires that suitable and available surplus property be made available to providers of assistance to the homeless when such a request is made. S. 1300 also does nothing to resolve environmental problems. These issues take the longest to clear up and therefore slow down the disposal process.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Mr. President, I summarize by saying, as I did when I started out, this literally takes our procedures for disposal of Federal property, as covered under the Federal Property and Administrative Services Act of 1949, and it exactly reverses the procedures. It stands the whole thing right on its head.

Instead of giving other Federal agencies first call on this property, then making States next in line, counties, local communities, and then individual sales, it starts by giving it to local communities with absolutely no restrictions, and it could not be sold off in other parcels. In other words, we give up all claim on this for any Federal use whatsoever.

Mr. President, I think this is wrong for the taxpayer, as spelled out in Terrence O'Donnell's letter that I just read into the RECORD. I think it is wrong from a taxpayer's standpoint and wrong for the use of this property, and I urge my colleagues to vote against this amendment.

I reserve the remainder of my time.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, exactly 1 year ago I came to this floor to introduce what I believed was a very important piece of legislation given the twilight of the cold war. The purpose of the legislation was to facilitate the closing of military bases deemed no longer necessary by the Department of Defense. My proposal was to make the closing of these bases easier by providing an opportunity to convert unneeded military installations into useful, even profitable community and State resources.

This would be done by reversing the order of priority for disposition of these bases, giving communities the first opportunity to take ownership of them, the State next and finally the Federal Government.

Mr. President, I was happy to hear the chairman of the Government Affairs Committee say that he would be willing to hold hearings on this important matter, along with the Armed Services Committee, because that is something I have been seeking for the last year or more.

As I mentioned, I did testify before the Armed Services Committee in 1990 on this matter, and before the Defense Base Closure and Realignment Commission in May of this year. I think it is worthwhile pointing out what the Defense Base Closure and Realignment Commission said in its 1991 report to the President.

On page 6-1 it noted that full economic recovery from base closure is dependent upon timely disposition of the facilities and land vacated by the services. The Secretary of Defense should do everything in his power to ensure a timely transfer of these valuable assets to the local community.

It goes on to say that "Reusing former military base property offers communities the best opportunity to rebuild their economies. The buildings and facilities can fill residential, commercial, and industrial needs and, thus, can replace jobs and income loss."

Air Force bases are especially marketable because of the national shortage of available hangar space.

Several communities that lost bases as a result of the 1988 Base Closing Commission have taken advantage of this opportunity for a quick economic turnaround. Attracting permanent tenants for the property once closure occurred is for economic recovery.

The Defense Base Closure and Realignment Commission continues to say "Successes can result from two things: early creation of an organization to plan and implement a suitable base reuse strategy; an aggressive marketing of base assets and available facilities."

It concludes this part, "that each community will have unique opportunities and constraints. The successful implication of any base reuse strategy hinges upon harnessing the energy and creativity present in the community."

For the first time in more than 50 years, we have the chance to safely but significantly cut military expenditures. The threat from abroad—especially from the Eastern bloc—has been diminished. Democracy is on the march throughout the world.

On the other hand, we are challenged by sincere and immediate needs here at home—needs that will require our best thinking and the most efficient use possible of our limited resources.

And frankly, I believe the Roth-Johnston-Breaux proposal to convert surplus military bases by providing them first to our communities—to use for their own economic well-being—is a prototype of the kinds of creative programs we need to meet our domestic agenda.

For example, Mr. President, many of the military installations that have been closed thus far have been successfully converted into economic boons for their respective communities. According to a recent Department of Defense study, 75 closed installations are now industrial parks. Another 42 have been converted into commercial airports. And 57 sites have been turned into colleges and vocational schools that enroll 160,000 people. Jobs have been created that more than compensate for those lost by the Federal Government packing its bags and leaving the area.

What our legislation proposes is to facilitate in this conversion process, to assist our communities in this time of transition. What it does is quite simple. It provides the communities—on a completely voluntary basis—the first opportunity to assume control of the closing installations—once they have been cleaned by the Department of Defense and found to be environmentally safe. If the community decides it does not want the base, the State government is given the next opportunity.

And finally, if both local and State governments determine the base does not meet their needs—that the installation cannot be changed into a viable economic entity, education or service facility—ownership will remain with the Federal Government.

By giving communities the first opportunity to receive the land we will also mitigate some of the negatives associated with closing bases. It is easy for any compassionate person to understand how hard it is for communities to let defense installations shut down—installations that are sometimes the sole revenue sources for those communities. It's easy to understand why our colleagues so ardently come to the defense of bases targeted for closing in their States and districts.

The key to minimizing this resistance is in maximizing the future economic potential of these areas—to literally turn the community's weakness—its reliance on an exclusive source for its economic well-being—into its strength.

This can be done. For example, of 100 defense installations that were closed between 1961 and 1990, more than 158,000 civilian jobs have been created by State and local redevelopment—158,000 jobs that more than compensates for the 93,000 positions that were lost. This bill will not only encourage but increase the potential for similar results by facilitating and accelerating the transition period and providing for the community's long-term needs—creating a real and lasting economic foundation.

The communities that receive the lands and buildings will be able to use them for whatever purpose they deem necessary. Even if their desire is to sell the real estate, they can do so with a fair and adequate compensation to the Federal Government. Such compensation is only right as money for such lands that are desired to be developed

professionally should be returned to the taxpayers who held the land in the first place. Local government and municipal development would not require compensation at the Federal level because the land would continue to serve the taxpayers.

Mr. President, the Federal Government must see to it that these unnecessary bases—and the consequent unnecessary drain on the Federal purse—are shut down. However, we have a very real obligation to the families of these special communities who have so diligently supported our defense effort—some of these communities dating back to the days of the Pony Express. The welfare and future of these families are very real concerns to me and my colleagues. These families are hard working, skilled men and women. They are the children who will be this Nation's future. And this bill takes their concerns to heart.

This bill will help provide them the capital assets they need to keep and even improve their standards of living. It will help them remain anxiously engaged in productive and even profitable careers and service.

It's a simple bill in its conception, but profound in its impact. I'm encouraged that it has attracted the attention of distinguished colleagues who share my concern. Like I said, it is an idea whose time has come.

I yield back the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. MITCHELL. Mr. President, will the Senator yield.

Mr. BUMPERS. I yield to the majority leader.

Mr. MITCHELL. Mr. President, I thank my colleague for his courtesy.

UNANIMOUS CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, following consultation with the distinguished Republican leader, the managers, and a large number of Senators interested in this amendment and several others, I am about to propound an agreement which will govern disposition of the pending amendment and several succeeding matters.

Accordingly, Mr. President, I ask unanimous consent that there be unlimited debate tonight on the Breaux amendment No. 1034, with no amendment to the amendment; that when the Senate resumes consideration of S. 1507 on Friday, August 2, at 9:30 a.m., there be 30 minutes remaining for debate on the Breaux amendment, with the time equally divided and controlled between Senators GLENN and BREAUX; that when the time is used or yielded back, the Senate, without intervening action or debate, proceed to vote on or in relation to the Breaux amendment; that upon disposition of the Breaux amendment, Senator EXON be recognized to offer an amendment regarding SRAM-T, on which there be 30 minutes of debate equally divided and controlled in the usual form, with no second-degree amendments in order; that when the time is used or yielded back, the Senate, without intervening action or debate, proceed to vote on or in relation to the Exon SRAM-T amendment; that upon disposition of the SRAM-T amendment, Senator DOLE be recognized to offer an amendment regarding Iraq, on which there be 30 minutes for debate, equally divided and controlled in the usual form, with no amendment to the amendment in order;

That when all time is used or yielded back, the Senate, without intervening action or debate, proceed to vote on or in relation to the Dole amendment; that upon disposition of the Dole amendment, Senator WIRTH be recognized to offer an amendment regarding military base abortions; that upon disposition of the Wirth amendment, Senator METZENBAUM be recognized to offer an amendment regarding Intelligence Committee budget savings on which there be 1 hour for debate, equally divided and controlled in the usual form, with no second-degree amendments in order, and that when all time is used or yielded back, the Senate, without intervening action or debate, proceed to vote on or in relation to the Metzenbaum amendment; further, that no motion to recommit be in order during the pendency of this agreement, nor there be any amendments in order to any language that may be stricken.

Mr. BREAUX. Mr. President, reserving the right to object, I do so only to ask the majority leader if he knows there have been discussions on an amendment that the staffs have been working on in the back. I think we have an agreement. That is being typed right now.

A lot of us will offer that amendment, which has an agreement on it.

Mr. MITCHELL. Mr. President, I ask that the amendment be modified to permit Senator BREAUX, as the author of amendment No. 1034, to modify his own amendment.

Mr. LAUTENBERG. Mr. President, reserving the right to object, and I shall not object, I just want to, while Senator BREAUX is still on the floor, be assured that the discussion that we have had has an agreement, and it is subject only to the writing of it, which seems to be a relatively uncomplicated task, to convey the meaning.

Is that the case, if I may ask?

Mr. BREAUX. The Senator is correct. It is being typed. We have an agreement.

Mr. GLENN. Mr. President, reserving the right to object, I think the rest of us would like to know what this private agreement is that is going to be written in this; what occurs on this bill concerns us.

Mr. BREAUX. If the majority leader will yield, we have to offer the amendment and it still has to be discussed, debated on, and voted.

Mr. GLENN. I thought the Senator said agreement was written into this.

Mr. LAUTENBERG. Agreement language that will be as part of the amendment.

Mr. GLENN. What I meant is, what is that agreement? We do not know if it is going to be part of the amendment.

Mr. BREAUX. I have the right to amend my own amendment. Certainly, that is subject to debate and questioning before it is voted on. It will not be voted on tonight.

Mr. GLENN. That means we cannot agree tomorrow morning, not knowing what would be in the final version of the amendment. I disagree with the unanimous-consent amendment. We debated an amendment now to a different amendment, tomorrow morning, and we are asking unanimous consent, 15 minutes on a side, if there is something I disagree with. I will not agree to the time agreement; I object.

Mr. JOHNSTON. Will the Senator yield?

Mr. MITCHELL. I have the floor. I am happy to yield to the distinguished Senator.

Mr. JOHNSTON. There has been drafting. I do not think we have agreement as to the words as yet. Perhaps the Senator from New Jersey and my colleague have, but there is clearly an agreement as to the substance, which is this: That we provide that where the property or parts of the property are not in compliance with RCRA and environmental laws, that that part of the property cannot be conveyed.

That is the clear intent of the language. It is just a question of drafting. But that is all it does. I do not think anybody disagrees with that.

Mr. LAUTENBERG. That is that. If the Senator from Louisiana will yield, if it was indicated there was a private agreement that affected just the particular interest, not at all. I approached this from the standpoint of the Environment Committee, and that is that any conveyance made by the Federal Government shall be subjected to——

Mr. GLENN. Again, if we can get a copy of this, look at it tonight, maybe we can debate it now. How does it affect State law under EPA? I do not know. Does it break down toxic waste? A lot of things are to be considered on this. Cost might be involved to the Federal Government. I find it difficult to agree to something we have not even seen.

Mr. MITCHELL. Mr. President, if I might have the attention of the junior Senator from Louisiana, it is my understanding that the discussions that have been occurring have had as their objective that stated by the senior Senator from Louisiana, which is to make clear that any property which is not in compliance with environmental laws, and specifically this Superfund law and the Resource Conversion Recovery Act,

cannot be conveyed and that the modification to be proposed by the Senator from Louisiana will accomplish that objective. Based upon what I have heard of this debate, I assume, from the standpoint of the Senator from Ohio, he would welcome that amendment, which is a modification which makes the Breaux amendment less objectionable.

Mr. GLENN. If the majority leader will yield, I indeed would welcome that. But I think we all have been around here long enough to know what a difference one or two words can make in legislation. If it is that simple, I am willing to stay here and debate it tonight. I just do not want to have a vote here without knowing what is going on.

Mr. MITCHELL. May I suggest that the Senator from Louisiana give the Senator from Ohio a copy of the modification?

Mr. GLENN. We do not have it yet. That is the problem.

Mr. MITCHELL. It was too good to be true that we could get an agreement covering four or five amendments at one time.

Mr. President, may I inquire of the junior Senator from Lousiana whether he is satisfied with the language that has been worked up to the point where he can give it to the Senator from Ohio and he can look at it for a few minutes, in which case it would be worth staying and pursuing this agreement.

Mr. GLENN. If the majority leader would yield, would it be all right if, rather than trying to do all that tonight at this hour, would it be just as well if we had a slightly extended time in the morning, let us say one-half hour on each side, instead of 15 minutes. That would give us plenty of time if it is OK, and we can probably give most of that time back.

Mr. MITCHELL. I think since we initially intended to come in at 9 and vote at 9:30 and changed that to come in at 9:30 and vote at 10, why do we not get back to the original starting time of 9 and have an hour and have the vote at the same time. Is that agreeable to the Senator from Ohio?

Mr. CONRAD. Reserving the right to object.

Mr. GLENN. With the provision we have a copy of the changes.

Mr. JOHNSTON. If we can have about 15 minutes to all go off and talk about it, I think we could maybe resolve it quickly.

Mr. DOLE. Let us get the agreement.

Mr. MITCHELL. I would be pleased to yield to the Senator from North Dakota for a question.

Mr. CONRAD. Mr. President, I have an amendment that I am attempting to get worked out on both sides, and hopefully that can be done. But I do not want to be frozen out, so I would just like to be added to the agreement.

Mr. MITCHELL Might I respond to the Senator that this does not foreclose anyone. This is not an exclusive list or a limitation upon any other amendments. This is an effort to line up some amendments so that we can transact business efficiently in the morning.

Mr. CONRAD. I appreciate that. If you get to the point of having a list that becomes an exclusive list, I would just like to have this amendment, which I think has the potential to be noncontroversial.

Mr. MITCHELL. I will ask the managers to make note of this.

The PRESIDING OFFICER. Is there objection?

Mr. MITCHELL. Mr. President, I am sorry, but the Senator from Louisiana has left the floor, and I am reluctant to proceed with an agreement on an amendment which he has a great interest in his absence unless we are certain that he is agreeable to it.

Mr. President, the Senator from Arkansas has been so gracious in yielding.

Might I ask the Senator if he would be willing to proceed with the understanding that in just a few moments we could interrupt again if we could get the agreement?

Mr. BUMPERS. As much as I hate to be interrupted, how can I deny the majority leader the right to interrupt me?

Mr. President, I do not know how long the consultations are going to take. I will be happy to yield to the majority leader again in a few moments if an agreement can be reached along the lines of the unanimous-consent request which he has just propounded.

Mr. President, first I commend my very distinguished colleague and good friend, Senator JOHNSTON of Louisiana, for bringing this amendment before this body.

I have more than a passing interest in this amendment for a very simple reason; that is, that my State takes the biggest hit, takes the biggest hit on a per capita basis, of any State in the Nation by these base closings.

Mississippi County, the First Congressional District of Arkansas, is one of the 10 poorest districts in America. Mississippi County, which is the center of the First Congressional District, or at least one of the centers, has not had less than a 10-percent unemployment rate in the past 10 years.

Now, you think of this. Mississippi County is the home of Eaker Air Force Base. The economy of that county, Mr. President, the only way on Earth that Mississippi County can survive is for that base to be conveyed to the people of that county and for that base to be put to some kind of civilian use to employ all of the people who are going to lose their jobs as a result of that base closing.

Mr. President, some people see human misery in abstract terms. I see human misery in real terms, because I grew up with it. I have seen the hollow faces of unemployed fathers, who had to look across the breakfast table at their families, unemployed, unable to make a car payment, unable to make a house payment, unable to even feed their families, let alone clothe them and educate them.

One of the members of the Base Closing Commission was asked this question—and I am reluctant to say this because I am not interested in denigrating members of that Commission who had a very difficult chore. But he was asked: Are economic considerations a factor in your determination? He said, no, we are really not concerned with that. We are concerned with the military value of these bases.

That went over big in Mississippi County, which has an unemployment rate of 10 percent and an unemployment rate, after Eaker Air Force Base is closed, projected to be 30 percent. You think about a county which has not had less than a 10-percent unemployment rate in 10 years and whose unemployment rate will go to 30 percent when the base is finally closed, and the cynicism, the arrogance of a member of the Base Closing Commission to say, no, we are not considering economics in this decision, with all the human misery that is brought about.

So, Mr. President, I want to say I am going to vote for the Johnston amendment. If it is not adopted, I will propose my own, and I will keep proposing my own until we get that property and the opportunity to give those people who are going to be suffering unbelievable human misery, until we get somebody onto that base that will provide economic opportunity for some of the people there.

I spoke to the school superintendent in Blytheville, AR, this afternoon. He is concerned about how they are going to pay their bond issue. There is a little town of Gosnell, just outside the boundary of Eaker Air Force Base, there are 4,000 people in Gosnell. After the base closes, there will be 2,000 people in Gosnell.

In the city of Blytheville, the school system which depends on the assessed valuation of the property in that district cannot begin to pay the bonded indebtedness that they owe when that base closes, and will not be able to pay it, even after that, unless we get that base conveyed to those people and they in turn are able to get somebody in there to utilize that property and provide jobs and build the economic base of that community.

I disagree with one part of the bill of the Senator from Louisiana where he says the President ought to have a waiver right. I would not even give the President the waiver right. This property ought to be conveyed back to those people.

For people to sit around here in the evening, tonight and tomorrow, and

talk about every little T being crossed and every I dotted, they do not know the magnitude of human misery that this base closing is causing all across America.

Every Senator here who comes out whole on this is going to vote for the base closings. They are going to be so relieved that they did not have a base closed. And to hell with those who did. Those of us who know the human misery this is causing have a quite different attitude about it. So I strongly support the amendment of the Senator from Louisiana. I do not want Eaker Air Force Base, if it has some toxic waste on it and some other problems. I do not want it to be conveyed. But otherwise we are entitled to it. I am going to support this amendment, and if it is not adopted I will support a dozen more until one is adopted.

I yield the floor.

THE C-17 PROGRAM

Mr. D'AMATO. Mr. President, today, the C-17 is 18 months behind schedule and as much as $2.6 billion over budget. The latest reports indicate that first flight is unlikely before the end of August and could slip to the end of the year.

Secretary Cheney made it clear with the termination of the A-12 that he does not suffer botched development programs gladly, though, in fairness to the manufacturers associated with that ill-fated aircraft, the design was revolutionary.

It is fortunate for the Air Force that the purely evolutionary C-17 has not been held to the same standards applied by Secretary Cheney to the A-12. The schedule slips and cost overruns experienced by the C-17 program are certainly as bad, if not worse, than those of the A-12 program when it was cancelled.

This was hardly the outcome anticipated when the fixed price development contract for the C-17 was signed in 1985. All of the major subsystems were flying or soon would be on other aircraft. As Brig. Gen. Elbert Harbour, then Deputy for airlift-trainer systems, said at the time, "I can't think of anything we're going to have to invent."

In fact, the Air Force was so confident about the C-17 that it proposed accelerating funding for the first 2 years of full-scale development in order to achieve significant R&D savings and permit early start on fabrication and risk reduction. By the end of 1987, however, the program had gone sour.

Fabrication and assembly of the first aircraft was delayed between December 1987 and August 1988. Major subcontractors were replaced or the work brought in house. By 1989, it became obvious that the original schedule was hopelessly unachievable and the entire program was rebaselined. The new schedule, however, could not prevent the latest first flight date, slipped from February 1989 to June 1991, from being missed yet again. Whether in reaction, or coincidentally, it was recently announced that C-17 work would be shifted from California to Missouri. How this will impact cost and schedule is unknown.

Incredibly, delays and overruns, while ominous, may not be the biggest problems associated with the C-17. It appears that at least three times since the fixed price development contract for the C-17 was signed in 1985 that the Air Force waived performance specifications guaranteed by warranty in return for concessions. No explanation has been offered as to why these waivers were required and granted, what performance versus mission requirement tradeoffs were considered, and what concessions were gained for the relief granted.

Most recently, the Air Force is reported to have dropped event-based contracting, a form of discipline that I am happy to say the Senate Armed Services Committee has sought to restore in its mark. More disturbing is the apparent handling, and possible linking, by the Pentagon of contractor requests for deferral of repayment of $1.35 billion associated with the A-12 and the creation of a $1 billion advanced payment pool and negotiations concerning C-17 contract options. This, combined with the aforementioned waivers which released the contractor from financial responsibility for meeting guaranteed performance specifications, hints at both a contractor and a program in dire straits.

Congress has supported the C-17 on the basis of its unique mixture of capabilities. If, in fact, those capabilities will not be achieved, or have been seriously compromised, it may behoove us to consider other options to C-17 production before we are in too deeply to pull out. For example, the exorbitant cost of the C-17 has been justified, and accepted, on the basis of its advantages over the C-5. Without those advantages, the vastly less expensive C-5 becomes a very appealing solution to addressing our long-standing airlift shortfall.

The Senate Armed Services Committee has taken an important step in the direction of bringing order to this program. I invite colleagues who share my commitment to modernizing the airlift capability of this country to question, to explore, and to exercise their oversight privileges over the C-17, a program that seems to have run amok.

DASCHLE-WOFFORD BURDEN-SHARING

Mr. WOFFORD. Mr. President, every year, the United States spends more than $130 billion to subsidize the defense of our most prosperous and economically competitive allies. To put it in perspective, that's six times more than the Federal Government spends on educating America's young people each year.

Our deployment of hundreds of thousands of American troops across the globe was a reaction to events of the post World War II and cold war world. It made sense for our Nation to position vast armies in Western Europe when vast armies of Soviet and Warsaw Pact troops were lined up against us in the East. But the Warsaw Pact has dissolved. The Berlin Wall has fallen. The Soviet Union is breaking apart. And just yesterday, Presidents Bush and Gorbachev signed the first United States-Soviet arms control treaty to reduce the number of intercontinental ballistic missiles.

As President Lincoln said, because our situation is new, we must think anew and act anew. We now need to adjust our strategy, and redefine America's role in a changing world, a world where the Soviet threat has receded, where Germany is reunited, and where the economic strength of Europe and Asia have increased.

Our allies already have recognized and responded to these new realities. Great Britain is cutting its armed services by 20 percent in 3 years. Germany is committed to a 30 percent cut over 2 years. While we talk about burden sharing, our allies are in the process of burden shedding.

And why shouldn't they? While we subsidize their defense, they are investing their tax dollars in educating their children, rebuilding their infrastructure, providing health care for their families, upgrading their industrial base, and improving their trade balances.

Congress has given the Department of Defense a mandate by Congress to close bases and cut troop levels overseas, and yet they are moving with remarkable lethargy. Since the Berlin Wall fell in 1989, American troop levels of Europe have been pared by only 10 percent.

It's not that they don't know how to close bases. In 1989, 86 domestic military bases were closed, 5 partially closed and another 54 realigned. Now we're facing a new round of cutbacks, and nowhere more so than in my State.

The list of recommendations for base closing and realignment here at home includes Philadelphia Naval Shipyard and Naval Station, the Naval Air Development Center at Warminster, the Letterkenny Army Depot, all in Pennsylvania. When you add it all up, a third of all direct civilian jobs lost from base closings nationally come from Pennsylvania, a State with only one-twentieth of the Nation's population.

In Philadelphia, at least 34,000 working men and women are facing unemployment and an uncertain future because of the proposed closing of the Philadelphia Naval Shipyard. Why are they bearing the brunt of defense cuts while we squander our defense dollars on bloated troop levels and bases overseas?

The Daschle-Wofford amendment would enable us to spend American defense dollars on America's defense. By encouraging the President to enter into defensive cost-sharing agreements, we will create a framework for long-term burden sharing with our allies. We are putting Congress on record as supporting a serious effort to have our allies pay a fair share of the cost of their own defense.

More and more, our Nation's strength and security will depend on our ability to compete economically. We need to use our precious resources to invest in our people and our communities here at home. Our wealthy allies need to use more of their resources for their own military defense. They need to share the burden, not shed it. This amendment will signal our intent to build a defense policy for the future, and I support its inclusion in the Defense authorization bill.

STRATEGIC STOCKPILE

Mr. CRAIG. Mr. President, my colleague, Senator SYMMS, and I wish to address an issue important to many of our constituents in Idaho that relates to the bill we are debating today. Title XXXIII of the Defense Authorization Act would authorize the disposal of certain materials in the national defense stockpile.

Of concern is the language used to authorize such sales. In part, section 3301, subsection (b) states:

Any disposal under subsection (a) shall be made from quantities of materials in the national defense stockpile previously authorized for disposal by law * * *

As Senators know, included as a material in the national defense stockpile is silver, a very important element to our strategic interests and national defense programs. I would also add that it is an important product mined in the State of Idaho.

Mr. SYMMS. If the Senator would yield; in fact, based upon statistics, Idaho recently ranked second in the Nation in silver supply. In 1988, Idaho silver production was 9 million troy ounces. So the Senator is quite correct in silver's importance to the State. Idaho depends heavily on mining as one of its major industries, and silver is certainly a critical element.

Yet, over the years the mining industry has gone through a difficult period in Idaho and around the country. Because of silver's importance to the interests of our national security and the depressed commercial market, the Congress and the administration has maintained an agreement to treat the disposal of our silver stockpile in a manner other than outright sale.

Mr. CRAIG. My friend is right. Mr. President, rather than simply disposing of the silver remaining in the defense stockpile through sale on the open market, we have developed a reasonable and responsible approach by reducing the inventory through commemorative coinage legislation. It has worked well over the years and has not had a negative impact on commercial commodity prices.

Mr. SYMMS. But if I understand it correctly, this legislation will not alter that current procedure. Is that correct?

Mr. CRAIG. Prior to investigating this matter, as it relates to the language in the bill, I doubt I could have answered the Senator's question. It is for this reason that I contacted the Assistant Secretary of Defense for Production and Logistics. Secretary McMillan has the responsibility of overseeing the defense stockpile, including acquisition and disposal of its materials.

In my conversation with his office, they assured me that the language contained in this bill will in no way affect our current silver program.

In fact, I received a letter from Secretary McMillan which outlines the Department of Defense's activities to reduce the silver stockpile.

Mr. SYMMS. I have a copy of the letter with me. If I may read a particular portion from Secretary McMillan, he states:

* * * The Department has no plans or activities to reduce our silver inventories other than those permitted by coinage legislation at this time. I believe the coinage program can be expanded in a way that is beneficial to both the silver industry and the Department of Defense.

Mr. CRAIG. Mr. President, to allay any fears people might have about this issue, I think it is quite clear from Secretary McMillan's letter, there will be no attempts to alter the current program. Mr. President, at the conclusion of Senator SYMMS and my remarks, I ask unanimous consent that Assistant Secretary McMillan's letter be printed in the RECORD.

Mr. SYMMS. Mr. President, I agree with Senator CRAIG as well. I thank him for his diligence in pursuing this matter and watching over the interests of our State and the Nation. Mr. President, I yield the floor.

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

ASSISTANT SECRETARY OF DEFENSE,
*Washington, DC, August 1, 1991.*

Hon. LARRY E. CRAIG,
*U.S. Senate Washington, DC.*

DEAR SENATOR CRAIG: Recent public discussion and the trade media have raised questions about National Defense Stockpile (NDS) disposals that will occur as the result of potentially lower requirements. An article in the Wall Street Journal incorrectly reported sales of silver from the NDS.

Statements by the Department of Defense Inspector General regarding the use of silver as a government furnished material in contracts has also caused unwarranted concerns. My information is that silver is trading at below the cost of mining. Therefore, the Department has no plans or activities to reduce our silver inventories other than those permitted by coinage legislation at this time. I believe that the coinage program can be expanded in a way that is beneficial to both the silver industry and the Department of Defense.

Please call me for a convenient time to visit with you.

Sincerely,

COLIN MCMILLAN.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I renew my request, with the modification previously stated that the junior Senator from Louisiana be permitted to modify his amendment, and with the further modification that the Senate resume consideration of this measure at 9 a.m., on Friday, August 2, and further modification at that time there be 60 minutes remaining for debate on the amendment.

Mr. President, I withhold my request. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I renew my request.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I thank my colleagues for their patience and cooperation. There will be no further rollcall votes this evening. Senators should anticipate a rollcall vote on the pending measure at approximately 10 a.m. tomorrow.

Under the agreement there will be an unlimited period for debate this evening. Any Senators who wish to address this measure further this evening are free to do so, and there will be 1 hour for debate on this amendment tomorrow, between 9 a.m. and 10 a.m.

I thank, especially the managers for their diligence in this matter.

Mr. NUNN. Will the leader yield for a brief question just to make absolutely clear, no other amendments will be permitted tonight?

Mr. MITCHELL. That is correct. To make it clear, on that, I ask unanimous consent that for the remainder of the session tonight, or for however long it goes, if it goes into the early morning hours of tomorrow, that there be debate only on the pending amendment and that there be no other action on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I ask the majority leader and also the President, am I correct it would be in order, under the unanimous consent to now modify the amendment as the leader just said?

Mr. MITCHELL. Yes.

AMENDMENT NO. 1034, AS MODIFIED

Mr. BREAUX. Mr. President, I send a modification to the desk.

The PRESIDING OFFICER. The Senator has that right. The amendment is so modified.

The amendment (No. 1034), as modified, is as follows:

On page 378, between lines 3 and 4, insert the following:

**SEC. 2804. CONVEYANCE OF CLOSED BASES TO NEIGHBORING COMMUNITIES.**

(a) FINDINGS AND PURPOSES.

(1) The Congress finds that—

A. The Department of Defense has been directed to reduce the size and cost of the military and this can only be accomplished by closing military installations;

B. A military installation is a part of the infrastructure of the community in which it is located and there is a long standing symbiotic relationship between a military installation and the community;

C. The people in an impacted community have made substantial, long term investments of time, training, and wealth to support the military installations;

D. The loss to an impacted community when a military installation is closed may be substantial and in such cases the Congress wishes to mitigate the damage to the impacted community;

E. An impacted community knows best the needs of the community and the best way to use available resources to meet these needs consistent with existing national priorities; and

F. Unfettered ownership of the real property associated with a closed military installation at the earliest possible time can partially offset the loss to a community which results when a military installation is closed.

(2) Therefore, it is the purpose of this Section—

A. To benefit communities impacted significantly when a military installation located in such communities is closed by authorizing the real and excess-related-personal-property, on which the military installations are located to be conveyed to the impacted community as soon as possible after a decision to close the military installation is made but no later than 180 days after closure; and

B. To provide significantly impacted communities a resource which will aid in mitigating the loss incurred by the community following a decision to close a military installation and which may be used by the impacted community, as the community deems appropriate, for industrial, commercial, residential, recreational, or public uses.

(b) IN GENERAL.—(1) Notwithstanding any other provision of law, the Secretary of Defense shall convey to an eligible political subdivision or subdivisions or State all right, title, and interest of the United States in the military installation closed pursuant to a base closure law in accordance with this section and the Comprehensive Environmental Response, Compensation, and Liability Act and the Solid Waste Disposal Act as determined by the Administrator of the Environmental Protection Agency.

(2) Even if the conditions set forth in paragraph (1) have been satisfied, the Secretary shall not convey such installation if the Secretary determines that the community or communities in the area of the real property to be conveyed are not experiencing or will not experience a significant adverse economic impact as a result of the closure of that military installation.

(c) DETERMINATIONS.—(1) The Secretary must make the determination referred to in subsection (b) in the case of a military installation as soon as practicable after the installation has been identified for closure, but in any event not later than the date on which the installation is closed.

(2) In determining whether a community is experiencing or will experience a significant adverse economic impact as a result of the closure of a military installation, the Secretary shall consider such objective evidence as the following:

(A) Declining real estate values.

(B) Increasing unemployment.

(C) Loss of revenue to the State and the community.

(D) Increasing rate of business failures.

(E) Significant decreases in total personal income.

(d) ADVANCE NOTICE TO ELIGIBLE STATES AND POLITICAL SUBDIVISIONS.—As soon as practicable after a military installation has been identified for closure, but in any event not later than the date on which the installation is closed, the Secretary shall transmit to the appropriate political subdivision, communities, counties and State to which property at such installation may be conveyed pursuant to this section advance notification of the Secretary's intention to make a conveyance of that property.

(e) ELIGIBLE STATES AND POLITICAL SUBDIVISIONS.—Property at a military installation that is to be conveyed pursuant to the requirement in subsection (b) shall be conveyed to a political subdivision or subdivisions or State in the following order of priority:

(1) To a political subdivision of a State that is designated in State law to receive the conveyance of such property and accepts the conveyance.

(2) If there is no political subdivision that satisfies the criteria in paragraph (1), then to the State in which the property is located if the law of that State designates the State to receive the conveyance of such property and the State accepts the conveyance.

(3) In the case of any real property for which neither a State nor a political subdivision of a State satisfies the criteria in paragraph (1) or (2), then to one or more political subdivisions of a State which the Secretary determines, after consultation with appropriate local officials, would best serve the interests of the residents of such subdivision or subdivisions and of the State in which the property is located, providing such subdivision or subdivisions accept such conveyance.

(4) In the case of any real property for which no subdivision or subdivisions or State accept such conveyance, then the Secretary shall offer the property to other departments and agencies of the Federal government.

(f) PROPERTY TO BE CONVEYED.—In addition to the conveyance of real property to a community or State pursuant to this section, the Secretary shall convey any related personal property that the Secretary determines is appropriate for use by the recipient in connection with the recipient's use of the real property.

(g) CONVEYANCE DEADLINE.—Except as provided in subsection (h), all property to be conveyed pursuant to this section in connection with the closure of a military installation shall be conveyed within 180 days after the date on which the installation is closed.

(h) PROPERTY NOT SUITABLE FOR CONVEYANCE.—The Secretary shall sever from the real property of a closed military installation to be conveyed pursuant to subsection (b) that real property which is not suitable for conveyance and make such transfers over a period longer than that which would otherwise be permitted under subsection (g). Property is not suitable for conveyance under the following conditions:

(1) When the political subdivision or state will not accept conveyance of a part of the real property of a closed military installation; or

(2) If the Administrator of the Environmental Protection Agency determines that such conveyance does not comply with the requirements of either the Comprehensive Environmental Response Compensation and Liability Act of 1980 or the Solid Waste Disposal Act; or

(3) When necessary to ensure completion of environmental restoration and mitigation projects.

(i) CONSIDERATION NOT TO BE REQUIRED.—No consideration may be required for a conveyance of property pursuant to this section.

(j) WAIVER AUTHORITY.—(1) Subject to paragraph (2), the President may waive in whole or in part the requirement to convey property at a military installation under subsection (b) if the President—

(A) determines that the continuation of the United States interest in such property—

(i) is vital to national security interests; or

(ii) the value of the base is so high that a conveyance to the political subdivision or state would constitute an undue windfall to the community and would not be necessary for the economic recovery of the region, provided that the number of waivers exercised under this Act do not exceed a cumulative total of five military installations for each package of closures approved by a commission under the Base Closure law. Provided further, a waiver in part shall not count against this limit if the value of the property reserved does not exceed 25% of the total value of such installation or if the appropriate political subdivision or state agrees with the reservation; and

(B) transmits to the Committees on Armed Services of the Senate and the House of Representatives a certification of such determinations together with the reasons for such determinations.

(2) A determination and certification in the case of the closure of any military installation shall be effective only if made before the earlier of—

(A) the date on which the installation is closed; or

(B) December 31 of the year following the later of the year in which the closure of that installation is approved by the President.

(3) The President may extend the deadline for making a determination and certification under paragraph (2) for not more than two successive periods of 90 days by transmitting to the congressional defense committees a notification of the extension before the end of the deadline or extended deadline, as the case may be.

(4) The President may withdraw a waiver under paragraph (1) in the case of any military installation. Not later than 180 days after the withdrawal of the waiver, the Secretary of Defense shall make the conveyance required by subsection (a) in accordance with this section.

(k) CONTINUING RESPONSIBILITY OF THE DEPARTMENT OF DEFENSE.—Prior to and after any conveyance of real property of a closed military installation pursuant to this section, the Secretary of Defense in consultation with the political subdivision or state shall be responsible for the following matters:

(i) To provide economic adjustment and community planning assistance including assistance in conducting public hearings to decide the appropriate use of a closed military installation to communities near the closed military installation until such time as the economic stability of such communities is achieved, as determined by the Secretary.

(ii) To comply with the Comprehensive Environmental Restoration Compensation Liability Act of 1980 and the Solid Waste Disposal Act in consultation with the Administrator of the Environmental Protection Agency.

(iii) To continue to carry out environmental restoration and mitigation activities relating to uses made of such installation before closure.

(l) SOURCES OF FUNDING.—The Secretary may expend any funds in the Base Closure Account to carry out the responsibilities referred to in subsection (k) and the Secretary shall notify the Congressional defense committees in advance of the obligation of funds for such purpose.

(m) IMPROVEMENT OF PROPERTY PENDING CONVEYANCE.—(1) Notwithstanding any other provision of law, the Secretary of Defense and the head of any other department or agency of the Federal Government may continue, on and after the applicable date referred to in paragraph (2), to obligate funds (to the extent available) for making improvements to the property that has not been conveyed that will facilitate the conveyance of the property and are consistent with the use to be made of the property by the recipient of the conveyance.

(2) Paragraph (1) applies in the case of property at a military installation on and after the later of the date on which the closure of that installation is approved by the President.

(n) DEFINITIONS.—In this section:

(1) The term "military installation" has the meaning given such term in section 2687(e)(1) of title 10, United States Code.

(2) The term "base closure law" means the following:

(A) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 102–510; 104 Stat. 1808; 10 U.S.C. 2687 note).

(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(C) Section 2687 of title 10, United States Code.

(3) The term "base closure account" means the following:

(A) The Department of Defense Base Closure Account established by section 207(a) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(B) The Department of Defense Base Closure Account 1990 established by section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 102–510; 104 Stat. 1815; 10 U.S.C. 2687 note).

In section 2(b), amend the table of contents by inserting after the item relating to section 2803 the following new item:

Sec. 2804. Conveyance of closed bases to neighboring communities.

Mr. MITCHELL. 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. BREAUX. 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. BREAUX. Mr. President, I ask unanimous consent the Senate be in a period of morning business.

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

## EXECUTIVE SESSION

### EXECUTIVE CALENDAR

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar 287: Joyce E. Tucker, to be a member of the Equal Employment Opportunity Commission

Calendar 290: The following persons to be members of the Board of Directors of the Commission on National and Community Service:

For a term of 1 year:
Gayle E. Wilson;
George W. Romney;
Karen S. Young;
William J. Byron;
Glen W. White.
For a term of 2 years:
Richard F. Phelps;
Alan Khazei;
Paul N. McCloskey, Jr.;
Reatha C. King;
Shirley S. Sagawa;
Wayne W. Meisel.
For a term of 3 years:
Daniel J. Evans;
Maria H. Ferrier;
Frances Hesselbein;
Patricia T. Rouse;
Joyce M. Black.

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

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

The nominations considered and confirmed, en bloc, are as follows:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Joyce Elaine Tucker, of Illinois, to be a member of the Equal Employment Opportunity Commission for a term expiring July 1, 1996. (Reappointment.)

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

The following-named persons to be members of the Board of Directors of the Commission on National and Community Service for the terms indicated:

For terms of 1 year:
Gayle Edlund Wilson, of California.
George Wilcken Romney, of Michigan.
Karen Susan Young, of California.
William J. Byron, of the District of Columbia.
Glen W. White, of Kansas.
For terms of 2 years:
Richard Frederick Phelps, of Indiana.
Alan Khazei, of Massachusetts.
Paul N. McCloskey, Jr., of California.
Reatha Clark King, of Minnesota.
Shirley Sachi Sagawa, of Virginia.
Wayne W. Meisel, of Minnesota.
For terms of 3 years:
Daniel J. Evans, of Washington.
Maria Hernandez Ferrier, of Texas.
Frances Hesselbein, July 31, 1991, Patricia Traugott Rouse, of Maryland, Joyce M. Black, of New York, Mr. Kennedy, Committee on Labor and Human Resources, without printed report.

STATEMENT ON THE NOMINATION OF THE COMMISSION ON NATIONAL SERVICE

Mr. KENNEDY. Mr. President, today I am pleased to recommend the confirmation of 16 Board Members of the Commission on National Service. The President nominated the members last week, and the Labor and Human Resources Committee has now reported the nominations.

The challenges we face as a Nation today are immense. It is encouraging, however, to be able to speak, not about our problems but about one of the most hopeful solutions—the involvement of more citizens in addressing them. The answer to America's most pressing challenges requires not only a strong effort from the government at every level but also a strong effort from the people. This commitment to strengthening our Nation is what community service is all about. It is my hope that community service will become a lifelong habit for all Americans.

The National Service Commission is charged with implementing the bipartisan National and Community Service Act which was passed by the Congress and signed into law by the President last fall. In the next year, the Commission will award $125 million in grants to States, universities, and nonprofit organizations to encourage more Americans to become involved in service to their communities. The millions of hours of community service that the Act will create represent a reaffirmation of our national commitment to lend a helping hand to our communities and our fellow citizens.

The Commission faces the task of quickly establishing an administrative framework that will inspire Americans to serve the Nation and create specific service opportunities. The new appointees bring to their assignment many different perspectives to helping others, and I am confident that they will contribute greatly to promoting the cause of community service across America.

I look forward to working with the National Service Commission to achieve these all-important goals for our country and our future.

LEGISLATIVE SESSION

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

AUTHORIZING STATEMENTS TO BE PRINTED IN THE PERMANENT RECORD

Mr. WALLOP. Mr. President, I ask unanimous consent that the following two statements, which I send to the desk on behalf of Senator SPECTER, be printed in the permanent RECORD of July 30, 1991.

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

The statements are as follows:

VOTE NO. 1

Mr. SPECTER. Mr. President, it is vital for the protection of law-abiding citizens that convicts be rehabilitated, if at all possible, before they are returned to society. Most convicts are released at some point in their lives. It is no surprise that functional illiterates, without a trade or skill, return to a life of crime after release from prison.

I have long advocated dividing the criminal population into two groups:

First, "career criminals" who should receive life sentences; and

Second, youthful offenders, first offenders, and many second offenders who can benefit from education/job training/rehabilitation programs.

Accordingly, I believe that eliminating access by convicts to Pell grants or any other education/rehabilitation program is not only unfair to them but is self-defeating because it ultimately subjects law-abiding citizens to repeat criminal offenses.

VOTE NO. 2

Mr. SPECTER. Mr. President, on July 18, 1991, during consideration of the Treasury/Postal Service appropriations bill, I voted in support of an amendment to impose criminal penalties on doctors, dentists, and other healthcare workers who know they have AIDS and perform invasive medical procedures without informing patients of their HIV status. In my view, healthcare workers have an obligation to disclose to their patients any risk of contracting HIV and other bloodborne diseases. Patients are virtually helpless to protect themselves when such a risk is posed by a healthcare worker.

Healthcare workers, however, do have guidelines to deal with the risk of contracting AIDS or other bloodborne diseases from their patients. The Centers for Disease Control have recommended universal precautions which include sterilization of equipment, wearing of gloves and gowns when appropriate, and careful handling and disposal of needles and other sharp equipment.

In addition, the Occupational Safety and Health Administration [OSHA] bloodborne disease standard would require all employers whose employees risk exposure to bloodborne diseases during the course of their work to implement an infection control program based on the universal precautions. Although the OSHA bloodborne disease standard was promulgated in May 1989, the Department of Labor has not yet implemented it. Once implemented, however, this standard will provide uniform protections throughout the country which will be enforced through inspections and the imposition of civil penalties.

In contrast to this uniform protection for healthcare workers, however, an amendment which I did not support was offered during consideration of the Commerce, State, Justice appropriations bill on Tuesday, July 30, 1991, which requires States to put into effect regulations protecting healthcare workers from contracting AIDS and hepatitis when performing invasive medical procedures. Under this amendment an array of implementation and enforcement standards could become effective across the country. Further, this amendment provided that, except in emergencies, licensed healthcare professionals could require that patients be tested for HIV prior to performing invasive procedures.

Since there is a window between exposure to HIV and the time at which a person tests positive, such tests may give a false sense of security. Rather than following precautions based on test results, the CDC guidelines and the proposed OSHA standard are based on universal precautions being followed. Following these guidelines also eliminates the problem of potential breach of confidentiality regarding patient tests.

In the context of being called to vote on these issues without advance notice and without hearings, many Senators felt some measure of uncertainty regarding medical practice and AIDS. This illustrates the desirability, if not indispensable need, to have hearings on these complex questions so that we can have the benefit of expert testimony and a period to reflect on the proper judgment. In sum, there are decisive differences between the vote to protect patients from risks from healthcare workers contrasted with the vote to protect healthcare workers from risks posed by patients for the reasons specified on the statement.

REMOVAL OF INJUNCTION OF SECRECY—INTERNATIONAL CONVENTION ON OIL POLLUTION PREPAREDNESS, RESPONSE AND COOPERATION TREATY

Mr. BREAUX. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the International Convention on Oil Pollution Preparedness, Response and Cooperation, Treaty Document No. 102–11, transmitted to the Senate today by the President; that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and the President's message be printed in the RECORD.

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

The messsage of the President is as follows:

*To the Senate of the United States:*

I transmit herewith, for the advice and consent of the Senate to ratification, the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, with Annex adopted at London, November 30, 1990. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Convention.

The Exxon Valdez experience demonstrated that catastrophic oil spills have the potential to overwhelm the resources of any single nation. The Convention is an important new international environmental agreement that establishes a global framework for cooperation among nations whose resources, knowledge, and expertise are available to share in preparing for and combatting such spills.

The Convention, which was signed by the United States on November 30, 1990, subject to ratification, was developed in response to a United States initiative at the Paris Economic Summit in July 1989. When in force, the global response coordination mechanism created by the Convention will make a significant contribution to minimizing damage from major oil pollution incidents and to the protection of the marine environment. I therefore recommend that the Senate give early and favorable consideration to the Convention and give its advice and consent to ratification.

GEORGE BUSH.

THE WHITE HOUSE, *August 1, 1991.*

VOLCANIC DISASTER IN THE PHILIPPINES

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 196, Senate Resolution 146, regarding the Mount Pinatubo volcanic disaster.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 146) expressing the sense of the Senate regarding the recent volcanic disaster in the Philippines.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

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

The resolution (S. Res. 146) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, are as follows:

S. RES. 146

Whereas the volcanic eruptions of Mount Pinatubo which began on June 9, 1991, on the northern island of Luzon have buried thousands of acres of farmland and homes under molten rock and ash;

Whereas at least 150 people have been killed and more than 200,000 forced to flee their homes to be housed in makeshift refugee centers;

Whereas it is unclear when many of the refugees will be able to return farmlands to production due to the extremely heavy ash accumulation;

Whereas nearly all unharvested crops in the affected area have been destroyed and the completion of next season's planting is in jeopardy;

Whereas Filipinos in the affected areas now face a serious shortage of food and clean drinking water;

Whereas health conditions are deteriorating due to contaminated air and water and lack of sanitation;

Whereas mud-slides threaten to bring greater damage to the affected areas for months to come;

Whereas the emergency resources of the Government of the Philippines have been seriously depleted by last year's devastating earthquake and typhoon;

Whereas travel into affected areas remain impeded, including air travel, which is crucial to relief operations;

Whereas Philippine volcanologists were among the first to recognize the danger from Mount Pinatubo, urged the evacuation of the Filipino civilian population, and have monitored the volcano's activity throughout the crisis;

Whereas the Armed Forces of the Philippines have played a useful role by providing humanitarian relief, logistical support, and rehabilitation resources to the affected area;

Whereas the initial United States assistance has provided a valuable supplement to the extraordinary efforts of the Government of the Philippines to respond to this disaster, as well as to the activities of private voluntary organizations and bilateral and multilateral donors; and

Whereas the people of America and the people of the Philippines have a long and historic relationship and have consistently struggled together through times of adversity to reach common goals: Now, therefore, be it—

*Resolved*, That it is the sense of the Senate that the President should continue to move expeditiously to provide assistance to the Philippines from all available government resources in an effort to—

(1) alleviate the immediate dangers of starvation, dehydration, disease, and exposure of Filipinos in affected areas;

(2) evacuate Filipinos from zones of continued danger either from further volcanic activity or from mud-slides;

(3) clear ash and debris from particularly critical lines of communication;

(4) increase the safety of air links into the affected region in order to facilitate more effective relief operations; and

(5) help the Government of the Philippines with its long-term goals of reconstruction and rehabilitation in the affected areas.

Mr. BREAUX. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

## FEDERAL MARITIME COMMISSION AUTHORIZATION ACT, FISCAL YEAR 1992

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 200, H.R. 1006, the Federal Maritime Commission reauthorization.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1006) to authorize appropriations for fiscal year 1992 for the Federal Maritime Commission, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Federal Maritime Commission Authorization Act of 1991".

**SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Federal Maritime Commission $17,974,000 for fiscal year 1992.

**SEC. 3. COASTWISE TRADE AUTHORIZATION.**

(a) IN GENERAL.—Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), or any other provision of law restricting the operation of foreign-flag vessels in the coastwise trade of the United States, as applicable on the date of enactment of this Act, the foreign-flag vessel NORDIC LOUISIANA may, during the period described in subsection (b), engage in the transportation by water of molten sulphur in the coastwise trade of the United States, if—

(1) a binding contract for the construction or rebuilding, in the United States, of a coastwise-qualified replacement vessel is executed within 9 months after the date of enactment of this Act;

(2) all ship repair work on the NORDIC LOUISIANA necessary to its operation under this section is performed in the United States; and

(3) all officers and crew members employed on board the NORDIC LOUISIANA during its operation under this section are United States citizens.

(b) PERIOD OF AUTHORIZATION.—The period of transportation authorized under subsection (a) begins on the date of enactment of this Act and ends on the earlier of—

(1) the date that is 4 years after such date of enactment; or

(2) the date of delivery of a coastwise-qualified replacement vessel constructed in or rebuilt in the United States.

**SEC 4. WAIVERS FOR CERTAIN VESSELS.**

(a) AUTHORIZATION TO ISSUE CERTIFICATES OF DOCUMENTATION.—Notwithstanding section 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of Transportation may issue a certificate of documentation for the following vessels:

(1) ARGOSY (United States official number 528616).

(2) CUTTY SARK (United States official number 282523).

(3) JIGGS (United States official number 208787).

(4) LOIS T (United States official number 668034).

(5) MARICA (State of Maryland registration number MD 6417P).

(6) PHOENIX (United States official number 655712).

(7) PURE PLEASURE (United States official number 968163).

(8) STARLIGHT VIII (United States official number 910317).

(9) WINDWARD III (United States official number 552289).

(10) LOGAN T (United States official number 953795).

(11) ERIC WC (hull identification number 64103).

(12) COMMANDO (United States official number 955188).

(b) WAIVER FOR CERTAIN INFLATABLE VESSELS.—Notwithstanding section 8 of the Act of June 19, 1886 (46 App. U.S.C. 289), and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the following inflatable vessels may engage in the coastwise trade:

(1) Serial number 3968B, model number J990.

(2) Serial number 4581B, model number J990.

(3) Serial number A501A, model number D989.

(4) Serial number A502A, model number D989.

(5) Serial number 6291C, model number G091.

(6) Serial number 6300C, model number G091.

(7) Serial number 7302C, model number G091.

(8) Serial number 7305C, model number G091.

(c) DOCUMENTATION OF M/V, NUSHAGAK.—Notwithstanding section 12106 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation for the fish processing vessel NUSHAGAK, United States offical number 618759.

**SEC. 5. CONTROLLED CARRIERS.**

(a) CONTROLLED CARRIER RATES.—Section 9(a) of the Shipping Act of 1984 (46 App. U.S.C. 1708(a)) is amended by inserting "or service contracts" immediately after "tariffs" each place it appears.

(b) EFFECTIVE DATE OF RATES.—Section 9(c) of the Shipping Act of 1984 (46 App. U.S.C. 1708(c)) is amended by inserting "and except for service contracts" immediately after "Notwithstanding section 8(d) of this Act".

Mr. HOLLINGS. Mr. President, I rise today in support of H.R. 1006, a bill to authorize appropriations for the Federal Maritime Commission [FMC] for fiscal year 1992. The bill authorizes appropriations essential for the operations of all of the many important programs of the FMC. I urge the Senate act to quickly to pass this bill.

H.R. 1006 authorizes $17,974,000 for the FMC for fiscal year 1992—the same

level as the FMC authorization bill passed by the House and as requested by the President. This is an increase of $2,080,000 over the fiscal year 1991 appropriated amount. The bill also amends the Shipping Act of 1984 to give the FMC more authority to oversee and regulate the possible predatory practices of foreign, government-owned carriers. The bill also grants waivers for certain vessels from the coastwise trading restrictions of the Jones Act.

Mr. President, this is an important bill for the operations of the FMC, and I urge its passage.

Mr. BREAUX. Mr. President, I rise in support of H.R. 1006, a bill that authorizes the appropriations for the Federal Maritime Commission [FMC] for fiscal year 1992. The bill authorizes $17,974,000 to be used for the operations of the FMC. This is the same amount requested by the President in his budget request and the same amount in the FMC authorization bill passed by the House.

The bill also amends the Shipping Act of 1984. That act includes provisions of the Shipping Act of 1978, more popularly known as the Controlled Carrier Act. There was an oversight in the Shipping Act of 1984 which allows the Act to be determined through the use of "service contracts" by controlled carriers who engage in the U.S. waterborne foreign commerce. The intention of this amendment is to resolve this problem by amending the Shipping Act of 1984 to require that rates filed by controlled carriers in service contracts meet the same standard as required for tariffs.

The bill also grants waivers from the Jones Act to allow several vessels to engage in the coastwise trade of the United States.

This legislation is necessary for the FMC to carry out all of its functions that are so important to regulation of the waterborne commerce of the United States. I, therefore, urge its quick passage.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

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

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 1006), as amended, was passed.

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

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

The motion to lay on the table was agreed to.

## INTERNATIONAL MORATORIUM ON USE OF LARGE-SCALE DRIFT NETS

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 166, House Concurrent Resolution 113 regarding drift nets.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 113) to express the sense of the Congress that the President should seek an international moratorium on the use of large-scale drift nets called for in United Nations Resolution 44–225, while working to achieve the United States policy of a permanent ban on large-scale drift nets.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

AMENDMENT NO. 1035

Purpose: To make an amendment in the nature of a substitute

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as folows:

The Senator from Wyoming [Mr. WALLOP], for Mr. STEVENS, proposes an amendment numbered 1035.

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

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

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

Whereas the policy of the United States is that there should be a permanent ban on destructive fishing practices, in particular large-scale driftnet fishing, by persons or vessels fishing beyond the exclusive economic zone of any nation;

Whereas the best available scientific data indicates that large-scale driftnet fishing incidentally kills thousands of endangered sea turtles, hundreds of thousands of marine mammals and millions of nontarget fish;

Whereas the United Nations, through General Assembly Resolutions 44-225 and 45-197, have called upon all nations to impose a moratorium on large-scale driftnet fishing beyond the exclusive economic zone of any nation by June 30, 1992;

Whereas the moratorium called for by the United Nations will not be imposed only if concerned parties agree that effective conservation and management measures exist which will prevent unacceptable impacts and ensure the conservation of living marine resources;

Whereas the available data indicates that effective conservation and management measures sufficient to prevent unacceptable impacts do not exist;

Whereas some nations may continue to engage in large-scale driftnet fishing after June 30, 1992, on the pretext that effective conservation and management measures exist or that they are engaging in "scientific" fishing;

Whereas some nations are permitting their nationals or vessels to expand the practice of large-scale driftnet fishing to new areas of the World's oceans and seas, including the North and South Pacific Ocean, the Atlantic Ocean, the Indian Ocean, and the Caribbean Sea; and

Whereas the continuation of large-scale driftnet fishing beyond the exclusive economic zone of any nation is contrary to sound stewardship of the world's living marine resources, the intent of United Nations General Assembly Resolutions 44–225 and 45–197, and the established policy of the United States: Now, therefore, be it

RESOLVED BY THE HOUSE OF REPRESENTATIVES (THE SENATE CONCURRING), That it is the sense of the Congress—

(1) that the President should take strong measures, including use of appropriate sanctions, to encourage other nations to cease all large-scale driftnet fishing beyond the exclusive economic zone of any nation by June 30, 1992; and

(2) that the President should coordinate the efforts of all Federal agencies, the Congress, affected coastal States, the fishing industry, and the conservation community to work with the United Nations and individual concerned nations to bring about, with respect to waters beyond the exclusive economic zone of any nation—

(A) the conservation of fishery stocks, and

(B) a permanent ban on destructive fishing practices, in particular large-scale driftnet fishing.

Mr. STEVENS. Mr. President. I am offering this amendment today to strengthen and clarify the resolution sent to this body by the House of Representatives. My amendment makes it clear that it is the policy of the United States to end destructive fishing practices on the waters beyond the exclusive economic zone of any nation. A particular example of such a destructive practice is large-scale drift net fishing, which the United Nations voted unanimously to impose a moratorium on after June 30, 1992.

The United States introduced the U.N. resolution in 1989 at the urging of Members of this body. But we cannot stop here. The moratorium called for in the resolution will only be effective if individual nations make it clear that noncompliance will not be tolerated. This amendment makes it clear the Congress believes the United States must continue to be a leader on this issue. The amendment calls on the President to take strong measures, including the use of appropriate sanctions, to encourage other nations to cease all large-scale driftnet fishing by June 30, 1992. A clear expression of our resolve on this issue, underlined by passage of substantive legislation such as the Packwood sanction bill, S. 884, is what is needed to finally rid us of these "curtains of death."

Drift nets are a scourge that must be eradicated, but unfortunately they are not the only destructive fishing prac-

tice in use today. The nations of the world, led by the United States in 1976, have all passed laws to protect the fisheries within 200 miles of their coasts. But we must not forget the fisheries that lie outside these exclusive economic zones. These fish stocks are under attack, not only from large-scale drift nets, but from other types of wasteful fishing as well. My amendment asks the President to coordinate U.S. efforts to work with other nations and the United Nations to conserve fishery stocks beyond the exclusive economic zone.

A good example of another destructive fishing practice is the growing threat from factory trawlers. These vessels drag nets the size of a football field through the water, scooping up everything in their path. But the processing plant on board can only handle certain sizes and types of fish, so the rest goes back over the side dead, crushed by the 60 to 100 tons of other fish that were dragged up in the net. Two years ago off Alaska factory trawlers in a profit-chasing frenzy wasted millions of usable fish when they stripped the lucrative roe from the fish and chucked the less valuable, but edible, flesh over the side. This practice was so offensive that the Congress specifically banned roe-stripping, along with large-scale driftnet fishing, when we passed the Magnuson Act amendments last year.

Factory trawlers are the vacuum cleaners of the seas. After drift nets, they are probably the most destructive fishing practice in the North Pacific. They operate inside and outside our 200-mile zone. Inside the zone they are at least subject to some restrictions imposed by the Magnuson Act. Outside the exclusive economic zone, factory trawlers fish unrestrained by any law. In light of this, the Senate in 1988 unanimously passed a resolution (S. Res. 396) that called for a moratorium on all fishing in the Doughnut Hole, an area of the Bering Sea beyond the exclusive economic zones of the United States and the Soviet Union that is heavily fished by vessels from many nations.

Since 1988, negotiations have been underway between the United States and five other nations, and an agreement to restrict fishing may eventually be reached. But I fear that it may not be soon enough. According to the Alaska Department of Fish and Game and the Japanese Ministry of Fisheries, the pollock stocks in the Doughnut may be on the verge of collapse. Such a collapse could have disastrous results for fishing inside the U.S. 200-mile zone, and for the health of the Bering Sea ecosystem in general. And this is just one example from the waters of Alaska—unfortunately, there are many others.

The fight to save the fisheries from destructive fishing practices has been a long one. In 1976 it was the Magnuson Act; in 1978 and 1985 it was negotiations with Japan; in 1987 it was the Driftnet Act; in 1988 the Doughnut; in 1989 the U.N. Resolution; in 1990 the Magnuson Act and Driftnet Act amendments. This year it is this resolution and S. 884. And it is not over yet. This amendment strengthens House Concurrent Resolution 113, and moves us one step further along the path to sustainable fisheries that will provide a harvestable resource for generations to come.

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

The amendment (No. 1035) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution, as amended.

The concurrent resolution (H. Con. Res. 113) was agreed to.

The preamble was agreed to.

Mr. BREAUX. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

## DRIFT NET MORATORIUM ENFORCEMENT ACT OF 1991

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 167, S. 884, regarding drift nets.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 884) to require the President to impose economic sanctions against countries that fail to eliminate large-scale driftnet fishing.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1036

(Purpose: To make an amendment in the nature of a substitute)

Mr. WALLOP. Mr. President, I send an amendment to the desk on behalf of Senator PACKWOOD, Senator KERRY, Senator STEVENS, Senator ADAMS, and Senator GORTON, in the nature of a substitute, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP], for Mr. PACKWOOD, for himself, Mr. KERRY, Mr. STEVENS, Mr. ADAMS, and Mr. GORTON, proposes an amendment numbered 1036:

Strike all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Driftnet Moratorium Enforcement Act of 1991".

**SEC. 2. POLICY AND FINDINGS.**

(a) POLICY.—It is the stated policy of the United States to—

(1) implement United Nations General Assembly Resolution numbered 44-225, approved December 22, 1989, which calls for an immediate cessation to further expansion of large-scale driftnet fishing and for a June 30, 1992 moratorium on the use of large-scale drift nets beyond the exclusive economic zone of any nation;

(2) prevent the further expansion of large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale drift nets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

(b) FINDINGS.—The Congress finds that—

(1) despite worldwide pressure against their use, large-scale drift nets continue to be used by persons or vessels fishing beyond the exclusive economic zone of any nation;

(2) large-scale driftnet fishing in the North Pacific, the Atlantic, the Indian, and the South Pacific Oceans beyond the exclusive economic zone of any nation is expanding in direct contravention of United Nations General Assembly Resolutions numbered 44-225 and 45-197;

(3) nations engaged in large-scale driftnet fishing export fish and fish products to the United States; and

(4) in order to ensure that the permanent worldwide ban on large-scale driftnet fishing beyond the exclusive economic zone of any nation takes effect on June 30, 1992, the United States should take the actions described in this Act and encourage other nations to take similar action.

**SEC. 3. SANCTIONS FOR FAILURE TO TERMINATE DRIFTNET FISHING.**

(a) CERTIFICATION OF INTENT.—Not later than January 1, 1992, the President shall certify to the Congress each nation whose nationals or vessels are known to engage in large-scale driftnet fishing and which has not officially notified the United States that, not later than June 30, 1992, such nation will terminate large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

(b) NOTIFICATION OF NONCOMPLIANCE.—Beginning July 1, 1992, the President shall immediately notify the Congress of any nation whose vessels or nationals are engaged in large-scale driftnet fishing beyond the exclusive economic zone of any nation on or after such date.

(c) ACTION BY THE PRESIDENT.—

(1) CERTIFICATION UNDER THE FISHERMEN'S PROTECTIVE ACTION OF 1967.—If a certification is made under subsection (a) with respect to any nation, such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)). Upon such certification all other applicable provisions of section 8 of the Fishermen's Protection Act of 1967 (22 U.S.C. 1978), including subsections (b) through (g) thereof, shall apply.

(2) PROHIBITION AGAINST IMPORTED FISH AND FISH PRODUCTS.—If a notification is made under subsection (b) with respect to any nation, the President shall direct the Secretary of the Treasury to immediately prohibit the bringing or importation into the United States of fish and fish products from such nation. Not later than 15 days after such notification, the President shall advise the Congress of any action taken by the President under this subsection. Subsections (c), (e), (f), and (g) of section 8 of the Fishermen's Protection Act of 1967 (22 U.S.C. 1978(c), (e), (f), and (g)) shall apply with respect to any prohibition imposed under this subsection.

(d) ADDITIONAL ECONOMIC SANCTIONS.—

(1) IN GENERAL.—If—

(A) a notification is made under subsection (b) and the President determines that prohibitions under subsection (c)(2) are insufficient to cause the involved nation to terminate large-scale driftnet fishing beyond the exclusive economic zone of any nation; or

(B) a nation against which an action has been taken under subsection (c) retaliates against the United States as a result of such action,

the President is authorized to impose additional economic sanctions against such nation.

(2) SCOPE OF ADDITIONAL ECONOMIC SANCTIONS.—The additional economic sanctions authorized under paragraph (1) include the imposition of—

(A) duties, import bans, or other import restrictions on the goods of a nation to which paragraph (1)(A) or (B) applies; and

(B) fees or restrictions on the services of such nation, notwithstanding any other provision of law.

(3) NOTIFICATION BY PRESIDENT.—The President shall notify the Congress within 15 days, if either—

(A) circumstance as described in subparagraph (1)(A) or (B) occur; or

(B) the President imposes additional economic sanctions under this subsection.

(e) DURATION OF RESTRICTIONS.—Any sanction imposed against a nation under subsection (c)(2) or (d) shall remain in effect until such time as the President certifies to the Congress that such nation has terminated large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

(f) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) LARGE-SCALE DRIFTNET FISHING.—The term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of one and one-half miles or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(2) FISH AND FISH PRODUCTS.—The term "fish and fish products" has the meaning given the term "fish products" in section 8(h)(4) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(h)(4)).

**SEC. 4. REPORT TO CONGRESS.**

Beginning on January 1, 1993, the President shall include in the report to Congress submitted under the Driftnet Act Amendments of 1990 (16 U.S.C. 1826) information with respect to—

(1) whether nationals or vessels of a nation have engaged in large-scale driftnet fishing beyond that nation's exclusive economic zone during the 12-month period preceding the date of such report; and

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

The amendment (No. 1036) was agreed to.

Mr. KERRY. Mr. President, I wish to recommend to my colleagues passage of S. 884, the Driftnet Moratorium Enforcement Act of 1991. This bill is vital to our efforts to stop driftnet fishing, one of the most egregious fishery practices plaguing our seas.

The need for an international driftnet ban is clear. Entire marine ecosystems are being thrown out of balance because of the selfish, shortsighted fishing exploits of a handful of nations. The international community already took the first step to stop this practice by agreeing to a U.N. resolution to institute a moratorium on driftnet fishing on June 30, 1992. Unfortunately, there is great concern that those countries that currently fish on the high seas with driftnets will not adhere to the U.N. resolution.

The bill that we are passing today will put additional pressure on these nations to comply with the driftnet moratorium. These countries will have to notify the United States by January 1, 1992, whether they intend to comply with the June 30, 1992, deadline. The United States may move to embargo fish and fish products under the Pelly amendment from those nations that do not state their intentions to comply by the deadline. Furthermore, this bill calls for mandatory embargoes of fish and fish products for any nation that continues driftnet fishing past the June 30, 1992, deadline. Mr. President, these measures are essential for ensuring that compliance is obtained with the terms of the moratorium.

Driftnets are an overly efficient, nonselective means of fishing that pirate our valuable marine resources. During the fishing season today, more than 1,000 driftnet vessels from Japan, Korea and Taiwan are deploying over 30,000 miles of nets each night in the North Pacific, totalling more than ten million miles each year. Thirty to fifty percent of the catch is lost when the nets are hauled in, and one-third of the fish brought aboard the vessel have no commercial value. In addition, driftnets ensnare thousands of dolphins, whales, sea lions and other marine mammals and kill hundreds of thousands of sea birds and nontargetted fish.

In the past, principal practitioners of driftnetting were the South Koreans, Taiwanese and Japanese. Today other fishing nations such as France, Britain and Ireland are expanding driftnet fishing in the Atlantic, claiming that their 2.5 mile nets are not large-scale. In addition, for the first time Taiwanese driftnet vessels have been sighted illegally fishing in both the North Atlantic and the Caribbean Sea. Fishermen from all these nations are taking short-term advantage of the bounty of the sea and must be stopped.

The world's fishing nations have been irresponsible in permitting this wasteful and destructive fishing practice to continue. We must develop a new ethic to restore and manage valuable ocean resources and promote their sustainable harvest. Nations spanning the globe must regard our oceans as one single ocean resource for all to share. That means sharing in the responsibility to conserve it. Agreement to and enforcement of fishing treaties is one means of accomplishing this.

The need for overall international fisheries management could not be more important than it is today. Scientists estimate that the oceans can only supply 100 million tons of fish a year. The world's fishermen already take over 95 million tons and continue to increase their harvests.

An opportunity awaits us in 1992 in Brazil at the U.N. Conference on Environment and Development, known as UNCED. It is imperative for us to usher in a new global convention banning the use of driftnets worldwide. With the United States taking the lead on ocean and coastal environmental issues at UNCED, it would be fitting for us to work together toward a driftnet convention for UNCED consideration.

That is an agenda item for tomorrow. Today the Senate can take pride in its action to penalize those nations which refuse to behave in accord with the multilateral determination that driftnet fishing must cease. It is a practice that must be halted and, with this legislation available as a tool, I am hopeful it will be halted.

Mr. PACKWOOD. Mr. President, every so often, we here in Congress hear about an issue that just mobilizes people. People across your State write letters, find you at county fairs, and call your State offices. These issues, when they happen, are usually emotional. Quite often they involve the loss of something very important to your State—something people want to save.

The fish, particularly salmon and steelhead, and marine mammals that swim in the waters of the Pacific have an historic importance in the Northwest. People want to save them.

Let me tell you how I know this issue is of the utmost importance to my constituents. When I was home in Oregon several months ago, I received a petition from 8,000 Oregonians, all who wanted to ban high seas driftnet fishing. What's more, when I asked Oregonians what they wanted Congress to do about driftnet fishing, more than 3,500 of them wrote me in support of my bill.

Oregonians don't like to think about what these huge nets are doing to our fish and wildlife. And they don't like to think about why this destruction occurs. I can sum it up in two words: for money. What we have here are countries that seem to have no problem—no passing thought—about destroying miles worth of ocean, just so they can increase their bounty.

To give you an example of the kind of money we are talking about, recent Taiwan newspaper reports say a fleet of 50 Taiwanese drift net vessels are illegally catching salmon and steelhead at an estimated profit of $37.5 million each time they go out fishing—that's $750,000 for each vessel.

Let there be no doubt about the destructiveness of these nets. A report released by the National Marine Fish-

eries Service last month documents that thousands of animals are killed in large-scale drift nets each year. Observers monitored only 10 percent of the Japanese drift netting fleet last year and found those nets alone caught:

First, 81,000 blue sharks;

Second, 30,000 seabirds;

3. Third, 1,700 whales and dolphins; and

Fourth, almost 10,000 salmon and steelhead.

That's just 10 percent of the Japanese fleet. And Japan is only one of many countries now drift netting.

It is no wonder so many fish and other marine animals are swept up by these nets. Drift nets are up to 60 feet in depth and stretch for more than 30 miles—about the distance between here and Dulles Airport. They are literally walls of death. And the amount of net that is laid is extraordinary. The drift net fleet fishing in the North Pacific—about 1,200 vessels—casts more than 25,000 miles of net each summer night—enough net if laid end-to-end to wrap around the earth's equator.

Our ocean environment isn't the only victim of drift nets. Northwest fisherman have also paid the price. Drift nets are trapping immature fish migrating to the Northwest. It is estimated that from 10,000 to 30,000 metric tons of North American salmon and steelhead, or about 21 million fish, are taken each year by Asian drift net fleets in the North Pacific.

We have solid proof of how drift netting is hitting our legitimate fishermen. The National Marine Fisheries Service has documented nearly 10 million pounds of illegally taken salmon that was smuggled through the United States and sold in Japan, and millions more pounds of this illegal salmon that has been sold around the world.

Some people might say drift netting is under control because we are monitoring the high seas under agreements we have made with Japan, Taiwan and Korea. In fact, what we have discovered through this monitoring is that these countries are blatantly violating the agreements they have signed with the United States.

Just last week, the U.S. Coast Guard spotted about 40 Taiwanese and Korean vessels fishing illegally in the North Pacific. These vessels were fishing in waters where we know U.S.-origin salmon swim; in waters supposedly closed to these countries under the drift net agreements. And to add insult to injury, two Taiwan patrol vessels were sighted in the area and were doing nothing to stop this illegal activity.

These salmon-stealers are out there right now casting their 30-mile nets that leave destruction behind. If these countries won't take our outrage over drift net fishing seriously, we have to show them that we're serious.

For years the Congress has battled this huge drift net fleet. The United Nations joined the battle with a resolution calling for a moratorium on high seas drift net fishing by June 30, 1992. However, too often I have seen deadlines become the starting point of negotiations. We simply cannot allow that to happen this time.

The bill we are discussing today says that instead of waiting for June 30, 1992, to start pushing for a worldwide drift net moratorium, we should start working for the moratorium now. Here is how my bill would work:

First, countries must notify the United States by January 1, 1992 whether they will stop large-scale drift net fishing by June 30, 1992. If a country does not commit to ban the use of drift nets, the President is authorized to place sanctions on fish and fish products that country exports to the United States.

Second, on June 30, 1992, the President is required to impose sanctions on the fish and fish products of countries that have not completely banned drift net fishing.

Third, the President is also authorized to invoke a whole array of additional economic sanctions if: the violating country retaliates with its own sanctions; fish sanctions alone don't convince the violating country to stop drift netting; or the country violates the drift net ban.

I urge my colleagues to support this bill to stop drift net fishing. This began as an issue important only to the Pacific Northwest. But it is no longer an issue that makes just Oregonians angry—it's making the world angry now. People are outraged about drift net fishing. They don't like what's happening to the waters of the world and they want to do something to stop it. They want us to do something to stop it. And today we can do that something.

Mr. ADAMS. Mr. President, I would like to thank my colleagues for approving House Concurrent Resolution 113 and S. 884 today.

The resolution calls on the President to seek an international moratorium on the use of large-scale drift nets as called for in U.N. Resolutions 44-225 and 45-197. At the same time, the Resolution works to achieve a U.S. policy for a permanent ban on large-scale drift nets.

Time is running out for endangered fish and marine mammals. The National Marine Fisheries Service recently released the most detailed report to date on the devastating effects of the drift net fishery.

This report should serve as a call to arms for an international ban on drift nets. The report warns that the United Nation's June 30, 1992, moratorium date will be too late for many endangered species of fish and marine mammals that will fall victim to drift nets. Drift nets are efficient, indiscriminate killing machines.

Look at the toll—the latest NMFS report, which covered only 10 percent of the Japanese squid fleet, documented a 1-year incidental catch of at least 1,758 dolphins, 22 whales, 545 northern fur seals, 303,464 sea birds, 3,300 salmon, 3 million pomfret, and 27 leatherback turtles and a loggerhead turtle.

Japan, Korea, and Taiwan together allow more than 1,000 drift net fishing vessels to sail freely in the North Pacific Ocean and the rest of the world's seas. They are driven by commercial greed. They share a collective disregard for the protection of endangered species. In the face of such arrogance, the United States must adopt an aggressive position.

I am tired of hearing the same old excuses. These countries have used these excuses for stubbornly refusing to ban trade in endangered species. They have used the same excuses for continuing the commercial slaughter of whales. And I expect they will let their drift net fleets keep fishing up to and perhaps beyond the U.N. moratorium deadline. We simply will not tolerate such behavior any longer.

I fully support and am a cosponsor of Senator PACKWOOD'S bill, S. 884, which takes a tough stand. It would force the President to ban the importation of fish and fish products from countries that do not cause drift net fishing by June 30, 1992. The bill also fgives the President the discretion to impose additional sanctions. Although I hope this additional authority need not be used, I believe that a ban on other products may be the only message these mercantile nations will understand.

I believe that House Concurrent Resolution 113 is important because it sends a forceful message to the drift net nations to stop this practice immediately. I hope those countries heed the message.

Finally, I would also like to extend a special note of appreciation to my distinguished colleague and friend, Representative JOLENE UNSOELD, who has worked diligently on the drift net ban and is the original sponsor of House Concurrent Resolution 113.

Mr. STEVENS. Mr. President. I am pleased to be a cosponsor of both the original bill and the amendment added today to S. 884. This legislation will place teeth in U.N. General Assembly Resolution 44-225, which calls for a moratorium on large-scale drift net fishing by June 30, 1992. The nations that permit their nationals to continue this destructive fishing practice beyond that date must realize the consequences.

There are some nations that have already made clear that they intend to keep using large-scale drift nets after June 30, 1992. They will try to claim that effective conservation and management measures exist which will pre-

vent unacceptable impacts. This is not the case nor will it be for the foreseeable future. The data we have collected to date on this wasteful practice shows clearly that such measures do not exist.

For years Alaskans have fought to rid the seas of these curtains of death. We have negotiated for years, but large-scale drift net fishing continues. The U.N. has spoken, yet some nations are already looking for ways to avoid the moratorium. We need the certainty of automatic sanctions to ensure that large-scale drift net fishing does in fact cease. S. 884 provides that certainty.

Mr. GORTON. Mr. President, today foreign fishing fleets are strip mining our oceans with 30-mile long drift nets that catch millions of sea creatures in their curtain of death. Attached to floats on the surface and reaching down 60 feet these nets catch nearly everything in their path. The only marine life spared are those creatures tiny enough to fit through the small webbing of these nets.

Every night in the summer, 25,000 miles of these drift nets are floating in the Pacific Ocean, enough of the deadly webbing to circle the globe.

These foreign fleets, from Japan, South Korea, Taiwan, and most recently China, are ostensibly fishing for squid. They claim that most of their catch is squid, that the incidental death of other marine life is small and inconsequential.

A recently released report from a joint team of observers from Japan and the United States tells an entirely different story. The report consisted of data from observers who monitored catches on just 10 percent of Japan's drift net fishing fleet. The results were appalling.

The numbers are hardly inconsequential. 253,288 tuna, 30,464 sea birds, and 3.2 million of the mackerel-like promfret fish were needlessly killed by this small group of drift netters. Twenty-two whales, 9,700 salmon, 81,956 sharks, 560 seals, and 1,700 porpoises and dolphins were part of the incidental kill of this small portion of the Japanese fleet. It is not difficult to project the devastation that is being wrought by the entire Japanese fleet, devastation that affects not only our fishermen, but the entire marine world. And Japan is just one of the countries involved in drift netting.

Over the past 3 years the National Marine Fisheries Service has repeatedly caught foreign dealers trying to sneak salmon, illegally caught by drift netters, into the United States so they can then be sold back to other countries. This process of washing the fish is not unlike what drug dealers do to launder money.

In 1988, one fish broker was caught trying to wash 24 million pounds of illegally caught salmon. In 1989 three drift netters were arrested in Seattle for trying to sell 500 metric tons of illegally caught salmon.

Earlier this year several people were caught in a complicated scheme to route millions of pounds of illegally caught fish through South America, an ingenious but unsuccessful attempt to circumvent our laws. Just this month, approximately 40 vessels from Taiwan and Korea were found illegally drift net fishing in closed waters known to contain salmon.

In 1989 the United Nations called on all countries to end the reckless practice of drift netting by June 30, 1992. In order to ensure that drift netting countries heed the United Nations and cease their wanton slaughter, I cosponsored S. 884, the Drift Net Moratorium Act of 1991 introduced by Senator PACKWOOD. I strongly support its passage and urge the House to immediately adopt this measure.

This bill requires the President to impose sanctions on seafood and seafood products exported to the United State by countries not abiding by the drift net ban. Furthermore, it allows the President to impose further sanctions on items such as automobiles, stereos, and VCRs is seafood sanctions alone do not work.

These countries have known for some time that this horrible practice must end but they have done nothing to stop it. In 1985 I introduced, along with Senators PACKWOOD and STEVENS, the first drift net bill in the Senate. Enacted in 1987 it directed the Secretary of State to negotiate agreements to monitor the catch of Japan, Taiwan, and Korea's drift net fleets.

While it didn't stop these fleets, it did put them on notice that the United States had serious concerns with the practice. Last year, Senators STEVENS, PACKWOOD and I further strengthened this law. These countries have had ample time to cease their destructive methods.

Now, there will be no phaseouts, no 5-year plans, no concessions. If these countries do not stop drift netting by June 30, 1992, S. 884 will require the President to impose sanctions on them period.

The time for talk is over. Millions of sea creatures are dying every year for no reason. There can be no compromise on this issue. Drift netting is destroying the ocean ecosystem and it must be stopped.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

S. 884

*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 "Driftnet Moratorium Enforcement Act of 1991".

**SEC. 2. POLICY AND FINDINGS.**

(a) POLICY.—It is the stated policy of the United States to—

(1) implement United Nations General Assembly Resolution numbered 44-225, approved December 22, 1989, which calls for an immediate cessation to further expansion of large-scale driftnet fishing and for a June 30, 1992 moratorium on the use of large-scale driftnets beyond the exclusive economic zone of any nation.

(2) prevent the further expansion of large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

(b) FINDINGS.—The Congress finds that—

(1) despite worldwide pressure against their use, large-scale driftnets continue to be used by persons or vessels fishing beyond the exclusive economic zone of any nation;

(2) large-scale driftnet fishing in the North Pacific, the Atlantic, the Indian, and the South Pacific Oceans beyond the exclusive economic zone of any nation is expanding in direct contravention of United Nations General Assembly Resolutions numbered 44-225 and 45-197;

(3) nations engaged in large-scale driftnet fishing export fish and fish products to the United States; and

(4) in order to ensure that the permanent worldwide ban on large-scale driftnet fishing beyond the exclusive economic zone of any nation takes effect on June 30, 1992, the United States should take the actions described in this Act and encourage other nations to take similar action.

**SEC. 3. SANCTIONS FOR FAILURE TO TERMINATE DRIFTNET FISHING.**

(a) CERTIFICATION OF INTENT.—Not later than January 1, 1992, the President shall certify to the Congress each nation whose nationals or vessels are known to engage in large-scale driftnet fishing and which has not officially notified the United States that, not later than June 30, 1992, such nation will terminate large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

(b) NOTIFICATION OF NONCOMPLIANCE.—Beginning July 1, 1992, the President shall immediately notify the Congress of any nation whose vessels or nationals are engaged in large-scale driftnet fishing beyond the exclusive economic zone of any nation on or after such date.

(c) ACTION BY THE PRESIDENT.—

(1) CERTIFICATION UNDER THE FISHERMAN'S PROTECTIVE ACTION OF 1967.—If a certification is made under subsection (a) with respect to any nation, such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)). Upon such certification all other applicable provisions of section 8 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978), including subsections (b) through (g) thereof, shall apply.

(2) PROHIBITION AGAINST IMPORTING FISH AND FISH PRODUCTS.—If a notification is made under subsection (b) with respect to any nation, the President shall direct the Secretary of the Treasury to immediately prohibit the bringing or importation into the United States of fish and fish products from such nation. Not later than 15 days after such notification, the President shall advise the Congress of any action taken by the President under this subsection. Subsections (c), (e), (f), and (g) of section 8 of the Fisher-

men's Protective Act of 1967 (22 U.S.C. 1978(c), (e), (f), and (g)) shall apply with respect to any prohibition imposed under this subsection.

(d) ADDITIONAL ECONOMIC SANCTIONS.—

(1) IN GENERAL.—If—

(A) a notification is made under subsection (b) and the President determines that prohibitions under subsection (c)(2) are insufficient to cause the involved nation to terminate large-scale driftnet fishing beyond the exclusive economic zone of any nation; or

(B) a nation against which an action has been taken under subsection (c) retaliates against the United States as a result of such action,

the President is authorized to impose additional economic sanctions against such nation.

(2) SCOPE OF ADDITIONAL ECONOMIC SANCTIONS.—The additional economic sanctions authorized under paragraph (1) include the imposition of—

(A) duties, import bans, or other import restrictions on the goods of a nation to which paragraph (1)(A) or (B) applies; and

(B) fees or restrictions on the services of such nation, notwithstanding any other provision of law.

(3) NOTIFICATION BY PRESIDENT.—The President shall notify the Congress within 15 days, if either—

(A) circumstances as described in subparagraph (1)(A) or (B) occur; or

(B) the President imposes additional economic sanctions under this subsection.

(e) DURATION OF RESTRICTIONS.—Any sanction imposed against a nation under subsection (c)(2) or (d) shall remain in effect until such time as the President certifies to the Congress that such nation has terminated large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

(f) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) LARGE-SCALE DRIFTNET FISHING.—The term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of one and one-half miles or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(2) FISH AND FISH PRODUCTS.—The term "fish and fish products" has the meaning given the term "fish products" in section 8(h)(4) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(h)(4)).

**SEC. 4. REPORT TO CONGRESS.**

Beginning on January 1, 1993, the President shall include in the report to Congress submitted under the Driftnet Act Amendments of 1990 (16 U.S.C. 1826) information with respect to—

(1) whether nationals or vessels of a nation have engaged in large-scale driftnet fishing beyond that nation's exclusive economic zone during the 12-month period preceding the date of such report; and

Mr. BREAUX. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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## CLEAN AIR ACT AMENDMENTS

Mr. BREAUX. Mr. President, on behalf of Senator MITCHELL, I send a joint resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the joint resolution.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 187) to make a technical correction in Public Law 101-549.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. MITCHELL. Mr. President, the purpose of this joint resolution is to make a technical correction in section 112 of the Clean Air Act, as amended by section 301 of the Clean Air Act Amendments of 1990, Public Law 101-549.

During consideration of the 1990 legislation the conferees agreed to remove the term "7783064 Hydrogen sulfide" from the list of hazardous air pollutants in section 112(b)(1) of the Clean Air Act.

This term was inadvertently left in the enrollment of the 1990 legislation due to a clerical error. The joint resolution simply removes the term from the list in the Clean Air Act, as amended.

The PRESIDING OFFICER. The joint resolution is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the joint resolution

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

S.J. RES. 187

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That in section 112(b)(1) of the Clean Air Act, as amended by section 301 of Public Law 101-549, strike out the term "7783064 Hydrogen sulfide" in the list of pollutants.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

IMMIGRATION ACT OF 1990 AMENDMENTS

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1620, a bill to make technical corrections with respect to the Immigration Act of 1990 and other immigration laws introduced earlier today by Senators KENNEDY and SIMPSON.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1620) to make technical corrections with respect to the Immigration Act of 1990 and other immigration laws.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. KENNEDY. Mr. President, I am pleased to join today with my colleague on the Immigration and Refugee Affairs Subcommittee, and cosponsor with me of The Immigration Act of 1990, Senator SIMPSON, in offering this technical corrections bill to the sweeping immigration legislation we passed in the last hours of the last Congress.

As our colleagues may remember, the opportunity to achieve final action upon a decade-long effort to secure immigration reform came only in the last days before Congress was scheduled to adjourn sine die. It came when the House completed action October 3 on a bill previously passed by the Senate the year before.

That gave conferees only a matter of days to resolve major differences between bills that were several hundred pages long. Inevitably, drafting errors and technical oversights occurred.

This bill, Mr. President, corrects those errors. We urge its adoption at this time so that these statutory clarifications can be made before final regulations are promulgated in the coming weeks and before most provisions of the act take effect on October 1, 1991. It is important that we do so for the effective implementation of the new law.

This technical corrections package has been carefully reviewed and drafted in consultation with the House subcommittee, and with all the relevant departments of the executive branch. I am assured it will be accepted by the House as is, and signed into law by the President.

This is noncontroversial, Mr. President, but it is extremely important that we make these corrections in a timely fashion. I urge its adoption.

Mr. SIMPSON. Mr. President, I am pleased to join my colleague, Senator KENNEDY, in introducing this bill to make technical corrections to the Immigration Act of 1990. The Act was signed by President Bush on November 29, 1990.

This bill is truly technical. It corrects errors committed because much of the law was drafted in the wee hours of the 101st Congress.

This bill's other major objective is to create certain transition rules which are necessary to help us move toward the new system of legal immigration that the 1990 Act puts into effect on October 1, 1991.

Let me emphasize that this package has been developed in conjunction with both Democrats and Republicans on the House Immigration Subcommittee, as well. This bill was developed under the following rule: If any of the four Immigration Subcommittee staff's found a provision controversial or nontechnical, then it was removed.

Let me state my intention on only two small portions of this bill:

This bill will deem certain old applications under section 203(a)(3) and

203(a)(6), as applications under new sections 203(b)(2) and 203(b)(3), respectively. Let me make it clear that any old application under section 203(a)(6) must be killed, as defined by the new law, else it will be subject to the new numerical limitation of 10,000 in new section 203(b)(3)(B).

This bill also deletes a reference to relief under section 212(c) in new section 242B(e)(5). This is done not to create new rights to relief under section 212(c), but to return to current law's exclusion of use of 212(c), under the conditions that apply, for any period of time (not just five years).

Mr. President, I thank the subcommittee Chairman for his cooperative spirit on this bill, and I urge my colleagues to pass it.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill

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

S. 1620

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; REFERENCE TO THE IMMIGRATION AND NATIONALITY ACT.

(a) This Act may be cited as the "Immigration Technical Corrections Act of 1991".

(b) In this Act, the term "INA" means the Immigration and Nationality Act.

SEC. 2. CORRECTIONS RELATING TO TITLE I OF THE IMMIGRATION ACT OF 1990.

(a)(1) Section 201 of the INA, as amended by section 101(a) of the Immigration Act of 1990, is amended—

(A) in subsection (c)(3), by striking "(3) The number computed under this paragraph for a fiscal year" and inserting the following:

"(3)(A) The number computed under this paragraph for fiscal year 1992 is zero.

"(B) The number computed under this paragraph for fiscal years 1993 and 1994 is the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas issued under section 203(a) during that fiscal year.

"(C) The number computed under this paragraph for a subsequent fiscal year"; and

(B) in subsection (d)(2), by striking "(2) The number computed under this paragraph for a fiscal year" and inserting the following:

"(2)(A) The number computed under this paragraph for fiscal year 1992 is zero.

"(B) The number computed under this paragraph for fiscal years 1993 and 1994 is the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas issued under section 203(b) during that fiscal year.

"(C) The number computed under this paragraph for a subsequent fiscal year".

(2) Section 101 of the Immigration Act of 1990 is amended by adding at the end the following new subsection:

"(c) TRANSITION.—In applying the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (as amended by subsection (a)) in the case of an alien whose citizen spouse died before the date of the enactment of this Act, notwithstanding the deadline specified in such sentence the alien spouse may file the classification petition referred to in such sentence within 2 years after the date of the enactment of this Act.".

(3) Section 202(a)(4)(A) of the INA, as amended by section 102(1) of the Immigration Act of 1990, is amended by striking "MINIMUM".

(b)(1) Section 112 of the Immigration Act of 1990 is amended—

(A) in subsection (c), by striking "temporary or" before paragraph (1), and

(B) by adding at the end the following:

"(d) WAIVER.—The provisions of section 212(a)(6)(E) of the Immigration and Nationality Act shall not apply to the issuance of an immigrant visa to an alien under this section (or to the admission of such alien under such visa to the United States) if the alien has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

"(e) DEFINITIONS.—The definitions in the Immigration and Nationality Act shall apply in the administration of this section.".

(2) Section 203(b) of the INA, as inserted by section 121(a) of the Immigration Act of 1990, is amended—

(A) in paragraphs (1), (2), and (3), by striking "40,000" and inserting "28.6 percent of such worldwide level" each place it appears,

(B) in paragraph (1)(C), by striking "who seeks" and inserting "the alien seeks",

(C) in paragraphs (4) and (5), by striking "10,000" and inserting "7.1 percent of such worldwide level" each place it appears, and

(D) in paragraph (2)(B), by inserting "professions," after "arts,".

(3) Section 216A of the INA, as inserted by section 121(b)(1) of the Immigration Act of 1990, is amended—

(A) in subsection (c)(2)(A), by inserting "(and the alien's spouse and children if it was obtained on a conditional basis under this section or section 216)" after "status of the alien", and

(B) in subsections (c)(3)(B) and (d)(2)(A), by striking "obtaining the status of".

(4) Section 121(b)(2) of the Immigration Act of 1990 is amended by striking "exclusion" and inserting "deportation".

(5) Section 124(a) of the Immigration Act of 1990 is amended—

(A) in paragraph (1)—

(i) by inserting "(or paragraph (2) as the spouse or child of such an alien)" after "paragraph (3)", and

(ii) by adding at the end the following new sentence: "If the full number of such visas are not made available in fiscal year 1991 or 1992, the shortfall shall be added to the number of such visas to be made available under this section in the succeeding fiscal year."; and

(B) in paragraph (3)(A), by striking "(and has been so employed during the 12 previous consecutive months)" and inserting "except for temporary absences at the request of the employer and has been employed in Hong Kong for at least 12 consecutive months".

(6) Section 132 of the Immigration Act of 1990 is amended—

(A) in subsection (a), by inserting "(or in subsection (d) as the spouse or child of such an alien)" after "subsection (b)";

(B) in subsection (a), by adding at the end the following new sentence: "If the full number of such visas are not made available in fiscal year 1992 or 1993, the shortfall shall be added to the number of such visas to be made available under this section in the succeeding fiscal year.";

(C) in subsection (c), by adding at the end the following: "If the minimum number of such visas are not made available in fiscal year 1992 or 1993 to such natives, the shortfall shall be added to the number of such visas to be made available under this section to such natives in the succeeding fiscal year. In applying this section, natives of Northern Ireland shall be deemed to be natives of Ireland."; and

(D) in subsection (e)—

(i) by striking "the grounds" and all that follows through "shall not apply, and",

(ii) by striking "of such section" and inserting "of section 212(a) of the Immigration and Nationality Act", and

(iii) by adding at the end the following: "In addition, the provisions of section 212(e) of such Act shall not apply so as to prevent an individual's application for a visa or admission under this section.".

(7) Section 133 of the Immigration Act of 1990 is amended—

(A) by inserting "and notwithstanding section 212(e) of such Act" after "Immigration and Nationality Act" the first place it appears, and

(B) in the last sentence, by inserting before the period at the end the following: "or who are provided a visa number under this section as the spouse or child of such a qualified immigrant".

(8) Section 134(a) of the Immigration Act of 1990 is amended by inserting "(or in subsection (d) as the spouse or child of such an alien)" after "subsection (b)".

(c) Section 141 of the Immigration Act of 1990 is amended—

(1) in the heading, by striking "**reform**",

(2) in subsection (a), by striking "Reform", and

(3) by adding at the end the following new subsection:

"(i) PRESIDENTIAL REPORT.—The President shall conduct a review and evaluation and provide for the transmittal of reports to the Congress in the same manner as the Commission is required to conduct a review and evaluation and to transmit reports under subsection (b).".

(d)(1) Section 152(b)(1)(A) of the Immigration Act of 1990 is amended by striking "who has performed faithful service" and inserting "and has performed faithful service as such an employee".

(2) Section 245 of the INA is amended—

(A) in subsection (c)(2), by striking "or (I)" and inserting ", (I), or (J)", and

(B) by adding at the end the following new subsection:

"(g) In applying this section to a special immigrant described in section 101(a)(27)(J)—

"(1) such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States; and

"(2) in determining the alien's admissibility as an immigrant—

"(A) paragraphs (4), (5)(A), and (7)(A) of section 212(a) shall not apply, and

"(B) the Attorney General may waive other paragraphs of section 212(a) (other than paragraphs (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), or (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest.

The relationship between an alien and the alien's natural parents or prior adoptive par-

ents shall not be considered a factor in making a waiver under paragraph (2)(B). Nothing in this subsection or section 101(a)(17)(J) shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.".

(3) Section 154(c) of the Immigration Act of 1990 is amended by striking paragraph (3).

(4) Section 155 of the Immigration Act of 1990 is amended—

(A) in subsection (a), by inserting "(or section 203(e), in the case of fiscal year 1992)" after "203(c)", and

(B) in subsection (b), by striking "or the child" and inserting "or who are the spouse or child".

(e)(1) Section 161(a) of the Immigration Act of 1990 is amended by striking "in this section," and inserting "in this title, this title and".

(2) Section 161(c) of the Immigration Act of 1990 is amended—

(A) in paragraph (1)—

(i) by inserting "or an application for labor certification before such date under section 214(a)(14)" after "before such date)",

(ii) in subparagraph (A), by inserting "or application" after "such a petition", and

(iii) in subparagraph (A), by inserting ", or 60 days after the date of certification in the case of labor certifications filed in support of the petition under section 212(a)(14) of such Act before October 1, 1991, but not certified until after October 1, 1993" after "(by not later than October 1, 1993"; and

(B) by adding at the end the following new paragraphs:

"(3) In the case of an alien who is described in section 203(a)(8) of the Immigration and Nationality Act (as in effect before October 1, 1991) as the spouse or child of an alien described in section 203(a)(3) or 203(a)(6) of such Act and who would be entitled to enter the United States under such section 203(a)(8) but for the amendments made by this section, such an alien shall be deemed to be described in section 203(d) of such Act as the spouse or child of an alien described in section 203(b)(2) or 203(b)(3)(A)(i), respectively, of such Act with the same priority date as that of the principal alien.

"(4)(A) Subject to subparagraph (B), any petition approved before October 1, 1991, to accord status under section 203(a)(3) or 203(a)(6) of the Immigration and Nationality Act (as in effect before such date) shall be deemed, on and after such date, to be a petition approved to accord status under section 203(b)(2) or under the appropriate classification under section 203(b)(3), respectively, of such Act (as in effect on and after such date). Nothing in this subparagraph shall be construed as exempting the beneficiaries of such petitions from the numerical limitations under section 203(b)(2) or 203(b)(3) of such Act.

"(B) Subparagraph (A) shall not apply more than one year after the date the priority date for issuance of a visa on the basis of such a petition has been reached.".

(3) Section 203(f) of the INA, as inserted by section 162(a) of the Immigration Act of 1990, is amended—

(A) by striking "PRESUMPTION.—" and all that follows through "so described." and inserting "AUTHORIZATION FOR ISSUANCE.—", and

(B) by striking "201(b)(1) or in subsection (a) or (b)" and inserting "201(b)(2) or in subsection (a), (b), or (c)".

(4) Section 204(a)(1) of the INA, as amended by section 162(b) of the Immigration Act of 1990, is amended—

(A) in subparagraph (A), by adding at the end the following: "An alien described in the second sentence of section 201(b)(2)(A)(i) also may file a petition with the Attorney General under this subparagraph for classification under such section.",

(B) in subparagraph (F), by striking "Secretary of State" and inserting "Attorney General", and

(C) in subparagraph (G)(iii), by striking "or registration".

(5) Section 204(e) of the INA, as amended by section 162(b)(3) of the Immigration Act of 1990, is amended by striking "a immigrant" and inserting "an immigrant".

(6) Section 212(a)(5) of the INA, as amended by section 162(e)(1) of the Immigration Act of 1990, is amended—

(A) in subparagraph (A), by inserting "(or who seeks to enter the United States as a nonimmigrant under section 101(a)(15)(H)(ii)(b))" after "203(b)", and

(B) in subparagraph (B), by inserting "(or who seeks to enter the United States as a nonimmigrant under section 101(a)(15)(H)(ii)(b))" after "203(b)".

(7) Section 245(b) of the INA, as amended by section 162(e)(3) of the Immigration Act of 1990, is amended—

(A) by striking "201(a)" and inserting "202 and 203", and

(B) by striking "for the succeeding fiscal year" and inserting "for the fiscal year then current".

(8) Effective as if included in section 162(e) of the Immigration Act of 1990—

(A) section 216(g)(1) of the INA is amended by striking "203(a)(8)" and inserting "203(d)";

(B) section 221(a) of the INA is amended by striking "nonpreference,"; and

(C) section 9 of Public Law 94–571 is amended by striking subsection (b).

(9) Effective as if included in the Immigration Nursing Relief Act of 1989, section 212(m)(2)(A) of the INA is amended, in the sentence following clause (vi), by inserting "whose principal responsibility is the provision of direct nursing care" after "registered nurses".

**SEC. 3. CORRECTIONS RELATING TO TITLE II OF THE IMMIGRATION ACT OF 1990.**

(a)(1) Section 217 of the INA, as amended by section 201(a) of the Immigration Act of 1990, is amended—

(A) in subsection (a)(4), by striking "BY SEA OR AIR" and inserting "INTO THE UNITED STATES", and

(B) in the heading of subsection (b), by striking "RIGHTS" and inserting "RIGHTS".

(2) Section 217(e)(1) of the INA, as redesignated by section 201(a)(7) of the Immigration Act of 1990, is amended by striking "(a)(4)(C)" and inserting "(a)(4)".

(3) The second sentence of section 251(d) of the INA, as inserted by section 203(b)(2) of the Immigration Act of 1990, is amended by striking "charterer" and inserting "consignee".

(4) Section 258(c)(2)(B) of the INA, as inserted by section 203(a)(1) of the Immigration Act of 1990, is amended by striking "each such list" and inserting "each list".

(5)(A) Section 101(a)(15)(H)(i)(b) of the INA, as amended by section 205(c)(1) of the Immigration Act of 1990, is amended by inserting "subject to section 212(j)(2)," after "(b)".

(B) Section 212(j) of the INA is amended by striking paragraph (2) and inserting the following:

"(2) An alien who is a graduate of a medical school and who is coming to the United States to perform services as a member of the medical profession may not be admitted as a nonimmigrant under section 101(a)(15)(H)(i)(b) unless the alien is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency.".

(6) Section 212(n)(1)(A)(ii) of the INA, as added by section 205(c)(3) of the Immigration Act of 1990, is amended by striking "for such aliens" and inserting "for such a nonimmigrant".

(7)(A) Section 101(a)(15)(H)(i) of the INA, as amended by section 205(c)(1) of the Immigration Act of 1990, is amended by striking ", and had approved by,".

(B) Section 212(n)(1) of the INA, as added by section 205(c)(3) of the Immigration Act of 1990, is amended by adding at the end the following:

"The Secretary of Labor shall review such an application only for completeness, internal consistency, and obvious inaccuracies.".

(8) Section 206(a) of the Immigration Act of 1990 is amended by inserting "and section 124(a)(3)(A) of this Act" after "Immigration and Nationality Act".

(9) Section 214(c)(2) of the INA, as added by section 206(b)(2) of the Immigration Act of 1990, is amended—

(A) in subparagraph (A), by striking "individuals petitions" and inserting "individual petitions", and

(B) in subparagraph (D)(ii), by striking "involved" and inserting "involves".

(10) Section 214(a)(2)(A) of the INA, as added by section 207(b)(1) of the Immigration Act of 1990, is amended by striking "under section 101(a)(15)(O)" and inserting "described in section 101(a)(15)(O)".

(11) Section 214(c)(5) of the INA, as added by section 207(b)(2)(B) of the Immigration Act of 1990, is amended by striking "101(H)(ii)(b)" and inserting "101(a)(15)(H)(ii)(b)".

(12) Section 207(c) of the Immigration Act of 1990 is amended by inserting "of the Immigration and Nationality Act" after "101(a)(15)(H)(ii)(a)" each place it appears.

(13) Section 101(a)(15)(Q) of the INA, as added by section 208(3) of the Immigration Act of 1990, is amended by striking "designated" and inserting "approved".

(14) Notwithstanding section 231 of the Immigration Act of 1990, until April 1, 1992, aliens seeking admission as nonimmigrant artists, athletes, entertainers, and fashion models (or for the purpose of accompanying or assisting in an artistic or athletic performance or as the spouse or child of such a nonimmigrant)—

(A) shall be admitted by the Attorney General under the provisions of section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (as in effect on September 30, 1991), and

(B) shall not be subject to the provisions of sections 101(a)(15)(O), 101(a)(15)(P), 214(a)(2), 214(c)(3), 214(c)(4), or 214(g)(1)(C) of the Immigration and Nationality Act (as added by sections 205(a) and 207 of the Immigration Act of 1990).

(b)(1) Section 221(a) of the Immigration Act of 1990 is amended, in the matter before paragraph (1), by striking "in a position unrelated to the alien's field of study and".

(2) Section 221(b) of the Immigration Act of 1990 is amended—

(A) by inserting "and the Secretary of Labor" after "the Commissioner of the Immigration and Naturalization Service", and

(B) by inserting "a report" after "to the Congress".

(3) Section 222(a) of the Immigration Act of 1990 is amended by striking "Subject to the

succeeding provisions of this section" and inserting "Subject to subsection (b)".

(4) Section 223(a) of the Immigration Act of 1990 is amended—

(A) by striking the period at the end of paragraph (2) and inserting a comma, and

(B) by adding at the end the following:

"or who is the spouse or minor child of such an alien if accompanying or following to join the alien.".

**SEC. 4. CORRECTIONS RELATING TO TITLE III OF THE IMMIGRATION ACT OF 1990.**

(a) Section 302(c) of the Immigration Act of 1990 is amended by striking "AFFECT" and inserting "EFFECT".

(b) Section 244A of the INA, as inserted by section 302(a) of the Immigration Act of 1990, is amended—

(1) in subsection (a)(1), by inserting after "designated under subsection (b)" the following: "(or in the case of an alien having no nationality, is a person who last habitually resided in such designated state)", and

(2) in subsection (c)(1)(A), by inserting after "designated under subsection (b)(1)" the following: "(or in the case of an alien having no nationality, is a person who last habitually resided in such designated state)".

**SEC. 5. CORRECTIONS RELATING TO TITLE IV OF THE IMMIGRATION ACT OF 1990.**

(a) Section 407(c)(11) of the Immigration Act of 1990 is amended by striking ", other than subsection (d)".

(b) Section 407(d)(8) of the Immigration Act of 1990 is amended by striking "Section 328(c) (8 U.S.C. 1439(c)) is amended" and inserting "Subsections (b)(3) and (c) of section 328 (8 U.S.C. 1439) are amended".

(c) Subsection (g) of section 334 of the INA, as redesignated by section 407(d)(12)(E) of the Immigration Act of 1990, is redesignated as subsection (f).

(d) Section 407(d)(12)(B) of the Immigration Act of 1990 is amended by adding "and" at the end of clause (i).

(e) Section 407(d)(16)(C) of the Immigration Act of 1990 is amended by striking the comma after "venue".

(f) Section 407(d)(19)(A)(i) of the Immigration Act of 1990 is amended by striking "clerk of the court" and inserting "clerk of court".

(g) Effective as if included in section 407(d) of the Immigration Act of 1990:

(1) Paragraph (24) of section 101(a) of the INA is repealed.

(2) Sections 312(a), 316(a)(1), and 316(f) of the INA are each amended by striking "petition" and inserting "application".

(3) Section 322 of the INA is amended by striking "PETITION" and "petitioning" and inserting "APPLICATION" and "applying", respectively.

(4) The item in the table of contents of the INA relating to section 322 is amended by striking "petition" and inserting "application".

(5) Section 330 of the INA is amended by striking "of this subsection" and inserting "of this section".

(6) Section 332 of the INA is amended by striking "petitioners" and inserting "applicants".

(h) Section 408(a)(2)(B) of the Immigration Act of 1990 is amended by striking "on the date of the enactment of this Act" and inserting "on January 1, 1992".

**SEC. 6. CORRECTIONS RELATING TO TITLE V OF THE IMMIGRATION ACT OF 1990.**

(a)(1)(A) Section 101(a)(43) of the INA, as amended by section 501(a)(4) of the Immigration Act of 1990, is amended by striking ",." and inserting a period.

(B) Section 501(b) of the Immigration Act of 1990 is amended by inserting before the period at the end the following: ", which section applies (except as otherwise provided) to convictions entered on or after the date of enactment of such Act".

(2) Section 502 of the Immigration Act of 1990 is amended by striking "(8 U.S.C. 1152a(a)(1))" and inserting "(8 U.S.C. 1105a(a)(1))".

(3) Section 287(a)(4) of the INA, as amended by section 503(a)(2) of the Immigration Act of 1990, is amended by striking ", and" at the end and inserting "; and".

(4) Subparagraph (B) of section 242(a)(2) of the INA, as added by section 504(a)(5) of the Immigration Act of 1990, is amended to read as follows:

"(B) The Attorney General may not release from custody any alien convicted of an aggravated felony, either before or after a determination of deportability, unless any of the following apply:

"(i) The alien is determined not to be deportable in a final determination under subsection (b).

"(ii) The Attorney General determines under subsection (c) that the alien's deportation is not practicable or proper within the period specified in such subsection, and the alien establishes, in the opinion of the Attorney General, that the alien is not a threat to the community.

"(iii) The alien establishes to the satisfaction of the Attorney General, that—

"(I) the alien may be eligible for relief under section 212(c),

"(II) in the opinion of the Attorney General, the alien is not a threat to the community, and

"(III) the alien's release is warranted during deportation proceedings.

"(iv) The Attorney General determines that other urgent and pressing, or exceptional, circumstances warrant release on parole.

In the case of such an alien convicted of an aggravated felony who is in the custody of the Attorney General and who is lawfully admitted for permanent residence, the Attorney General shall release such alien from custody if the alien demonstrates to the satisfaction of the Attorney General that clause (ii), (iii), or (iv) of the previous sentence applies to the alien.".

(5) Section 236(e) of the INA, as amended by section 504(b) of the Immigration Act of 1990, is amended—

(A) in paragraph (1), by striking "upon completion of the alien's sentence for such conviction" and inserting "upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense)", and

(B) by striking paragraphs (2) and (3) and inserting the following:

"(2) Notwithstanding section 212(d)(5), the Attorney General may not release from custody any alien convicted of an aggravated felony, either before or after a determination of excludability, unless any of the following apply:

"(A) The alien is ordered admitted in a final decision under subsection (b).

"(B) The Attorney General determines under section 237 that the alien's immediate deportation is not practicable or proper, and the alien establishes, in the opinion of the Attorney General, that the alien is not a threat to the community.

"(C) The alien establishes to the satisfaction of the Attorney General, that—

"(i) the alien may be eligible for relief under section 212(c),

"(ii) in the opinion of the Attorney General, the alien is not a threat to the community, and

"(iii) the alien's release is warranted during exclusion proceedings.

"(D) The Attorney General determines that other urgent and pressing, or exceptional, circumstances warrant release on parole.".

(6) Section 509(b) of the Immigration Act of 1990 is amended by inserting before the period at the end the following: ", except with respect to conviction for murder which shall be considered a bar to good moral character regardless of the date of the conviction".

(7) The last sentence of section 510(b) of the Immigration Act of 1990 is amended by striking "for".

(8) The last sentence of section 212(c) of the INA, as added by section 511(a) of the Immigration Act of 1990, is amended by striking "an aggravated felony and has served" and inserting "one or more aggravated felonies and has served for such felony or felonies".

(9) Section 513(b) of the Immigration Act of 1990 is amended by striking "petitions to review" and inserting "petitions for review".

(10) Section 514(a) of the Immigration Act of 1990 is amended by striking "10 years" and inserting "ten years".

(11)(A) Section 208(d) of the INA, as added by section 515(a)(1) of the Immigration Act of 1990, is amended by inserting "is ineligible for asylum under section 236 and" after "subsection (a),".

(B) Section 515(b)(2) of the Immigration Act of 1990 is amended by striking "(a)(1)" and inserting "(a)(2)".

(12) Paragraphs (1) and (2) of section 515(b) of the Immigration Act of 1990 are amended to read as follows:

"(1) The amendment made by subsection (a)(1) shall apply to convictions entered before, on, or after the date of the enactment of this Act and to applications for asylum made on or after such date.

"(2) The amendment made by subsection (a)(2) shall apply to convictions entered before, on, or after the date of the enactment of this Act and to applications for withholding of deportation made on or after such date.".

(b)(1) Section 274B(g)(2)(B)(iv)(II) of the INA, as amended by section 536(a) of the Immigration Act of 1990, is amended by striking "subclause (IV)" and inserting "subclauses (III) and (IV)".

(2) Section 274B(g)(2)(B) of the INA, as amended by section 539(a) of the Immigration Act of 1990, is amended—

(A) in clause (iv)(IV), by striking the period at the end and inserting a comma,

(B) in clause (vii), by striking "to order (in an appropriate case) the removal of" and inserting "to remove (in an appropriate case)", and

(C) in clause (viii), by striking "to order (in an appropriate case) the lifting of" and inserting "to lift (in an appropriate case)".

(c)(1) Section 274B(g)(2)(D) of the INA is amended by striking "physicially" and inserting "physically".

(2) Sections 252(c) and 275 of the INA, as amended by section 543(b) of the Immigration Act of 1990, is amended by striking "fined not more than" and all that follows through "United States Code)" and inserting "fined under title 18, United States Code,".

(3)(A) The second sentence of section 231(d) of the INA is amended by striking "collector of customs" and inserting "Commissioner".

(B) The third sentence of section 237(b) of the INA is amended by striking "district di-

rector of customs" and inserting "Commissioner".

(C) The second sentence of section 254(a) of the INA is amended by striking "collector of customs" and inserting "Commissioner".

(D) The second sentence of section 273(b) of the INA is amended by striking "collector of customs" and inserting "Commissioner".

(4) Section 274C(a) of the INA, as added by section 544(a) of the Immigration Act of 1990, is amended—

(A) in paragraph (2), by inserting "provide, facilitate," after "obtain,",

(B) in paragraph (3), by inserting "provide," after "use," each place it appears, and

(C) in paragraph (4), by inserting "provide," after "to" the first place it appears.

(5) Section 544 of the Immigration Act of 1990 is amended by striking "(c) EFFECTIVE" and inserting "(d) EFFECTIVE".

(6) Section 242B of the INA, as inserted by section 545(a) of the Immigration Act of 1990, is amended—

(A) in subsection (a)(2)(A)(ii), by inserting ", except under exceptional circumstances," after "failure";

(B) in subsection (a)(2), by adding at the end the following:

"In the case of an alien not in detention, a written notice shall not be required under this paragraph if the alien has failed to provide the address required under subsection (a)(1)(F).";

(C) in subsection (b)(1), by inserting before the period at the end the following: ", unless the alien requests in writing an earlier hearing date";

(D) in subsection (b)(2)—

(i) by inserting "pro bono" after "to represent", and

(ii) by adding at the end the following: "Such lists shall be provided upon request under subsection (a)(1)(E) and otherwise made generally available.";

(E) in subsection (c)—

(i) in paragraph (1), by striking "except as provided in paragraph (2)," each place it appears,

(ii) in paragraph (1), by adding at the end the following: "The written notice by the Attorney General shall be considered sufficient for purposes of this paragraph if provided at the most recent address provided under subsection (a)(1)(F).", and

(iii) by amending paragraph (2) to read as follows:

"(2) CASE OF FAILURE TO PROVIDE ADDRESS INFORMATION.—If an alien has failed to provide the address required under subsection (a)(1)(F), is not under detention, and does not attend a proceeding under section 242, the alien shall be ordered deported under section 242(b)(1) in abstentia if the Attorney General establishes by clear, unequivocal, and convincing evidence that the alien is deportable.";

(F) in subsection (c)(4), by inserting "(or 30 days in the case of an alien convicted of an aggravated felony)" after "60 days";

(G) in subsection (d), by striking "the Board" and inserting "the Attorney General";

(H) in subsection (e)(4)(B), by inserting "a" after "with respect to"; and

(I) in subsection (e)(5), by striking subparagraph (A) and redesignating subparagraphs (B) through (D) as subparagraphs (A) through (C), respectively.

(7) The 8th sentence of section 242(b) of the INA, as amended by section 545(e) of the Immigration Act of 1990, is amended to read as follows: "Such regulations shall include requirements that are consistent with section 242B and that provide that—

"(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held,

"(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose,

"(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence on his own behalf, and to cross-examine witnesses presented by the Government, and

"(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.".

**SEC. 7. CORRECTIONS RELATING TO TITLE VI OF THE IMMIGRATION ACT OF 1990.**

(a) Section 212(a) of the INA, as amended by section 601(a) of the Immigration Act of 1990, is amended—

(1) in paragraph (1)(A), by adding "or" at the end of clause (ii);

(2) in paragraph (3)(A)(i), by inserting "(I)" after "any activity" and by inserting "(II)" after "sabotage or";

(3) in paragraph (3)(B)(iii)(III), by striking "an act of terrorist activity" and inserting "a terrorist activity";

(4) in paragraph (3)(D)(iv), by striking "if the alien" and inserting "if the immigrant";

(5) in paragraph (3)(C)(iv), by striking "identities" and inserting "identity";

(6) in paragraph (6)(B)—

(A) by striking "who seeks" and inserting "(a) who seeks",

(B) by striking "(or" and inserting ", or (b) who seeks admission", and

(C) by striking "felony)" and inserting "felony,"; and

(7) in paragraph (8)(B), by striking "alien" the first place it appears and inserting "person"; and

(8) in paragraph (9)(C)—

(A) in clause (i), by striking everything that follows "entry of" and inserting "an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child outside the United States from the person granted custody by that order, is excludable until the child is surrendered to the person granted custody by that order.", and

(B) in clause (ii), by striking "to an alien who" and all that follows through "signatory" and inserting "so long as the child is located in a foreign state that is a party".

(b) Section 212(c) of the INA, as amended by section 601(d)(1) of the Immigration Act of 1990, is amended by striking "subparagraphs (A), (B), (C), or (E) of paragraph (3)" and inserting "paragraphs (3) and (9)(C)".

(c) Section 212(d)(3) of the INA, as amended by section 601(d)(2)(B)(i) of the Immigration Act of 1990, is amended—

(1) by striking "(3)(A)," and inserting "(3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii)," each place it appears, and

(2) by striking "(3)(D)" and inserting "(3)(E)" each place it appears.

(d) Section 212(d)(11) of the INA, as added by section 601(d)(2)(F) of the Immigration Act of 1990, is amended by striking "voluntary" and inserting "voluntarily".

(e) Section 212(h) of the INA, as amended by section 601(d)(4) of the Immigration Act of 1990, is amended—

(1) in the matter before paragraph (1), by striking "in the case of" and all that follows through "permanent residence"; and

(2) in paragraph (1)—

(A) in the matter before subparagraph (A), by inserting "(A) in the case of any immigrant" after "(1)",

(B) by striking "and" at the end of subparagraph (A),

(C) by striking "and" at the end of subparagraph (C) and inserting "or",

(D) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and

(E) by adding at the end the following:

"(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's exclusion would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; and".

(f) Section 212(l) of the INA, as amended by section 601(d)(5) of the Immigration Act of 1990, is amended by striking "alien" and "alien's" each place it appears and inserting "immigrant" and "immigrant's", respectively.

(g) Section 241(a) of the INA, as amended by section 602(a) of the Immigration Act of 1990, is amended—

(1) by striking "deportable as being", and by inserting "deportable" after "the following classes of",

(2) in paragraph (1)(D)(i), by inserting "respective" after "terminated under such",

(3) in paragraph (1)(E)(i), by inserting "any" before "entry" the second and third places it appears,

(4) in paragraph (1)(G), by striking "212(a)(5)(C)(i)" and inserting "212(a)(6)(C)(i)",

(5) in paragraph (1)(H), by striking "paragraph (6) or (7)" and inserting "paragraph (4)(D)",

(6) in paragraph (2)(D), by inserting "or attempt" after "conspiracy",

(7) in paragraph (3), by adding at the end the following:

"(C) DOCUMENT FRAUD.—Any alien who is the subject of a final order for violation of section 274C is deportable."; and

(8) in subparagraphs (A) and (B) of paragraph (4), by striking "after entry has engaged" and inserting "after entry engages".

(h) Section 102 of the INA, as amended by section 603(a)(2) of the Immigration Act of 1990, is amended by striking "paragraph (3) (other than subparagraph (E)) of section 212(a)" each place it appears and inserting "subparagraphs (A) through (C) of section 212(a)(3)".

(i) Section 210A(e)(2)(B) of the INA, as amended by section 603(a)(6) of the Immigration Act of 1990, is amended—

(1) in clause (iii), by striking "Paragraphs and" and inserting "Paragraph", and

(2) in clause (iv), by striking "(3)(D)" and inserting "(3)(E)".

(j) Effective as if included in section 603(a)(5) of the Immigration Act of 1990, section 210(b)(7)(B) of the INA is amended by striking "212(a)(19)" and inserting "212(a)(6)(C)(i)".

(k) Effective as if included in section 602(b) of the Immigration Act of 1990, section 241 of the INA is amended—

(1) by striking subsection (d), and

(2) in the subsection (h) (added by section 153(b) of the Immigration Act of 1990) by striking "exist" and inserting "existed" and by redesignating the subsection as subsection (c).

(l) Effective as if included in section 603(a) of the Immigration Act of 1990:

(1) Section 210A(e)(2)(B) of the INA is amended by striking clauses (iii) and (iv) and inserting the following:

"(iii) Paragraph (3) (relating to security and related grounds).".

(2) Section 217(a) of the INA is amended by striking "(26)(B)" and inserting "(7)(B)(i)(II)".

(3) Section 218(g)(3) of the INA is amended by striking "212(a)(14)" and inserting "212(a)(5)(A)(i)".

(4) Section 244A(c) of the INA, as inserted by section 302(a) of the Immigration Act of 1990, is amended—

(A) in paragraph (1)(B), by adding at the end the following: "In the case of aliens registered pursuant to a designation under this section made after July 17, 1991, the Attorney General may impose a separate, additional fee for providing an alien with documentation of work authorization. Notwithstanding section 3302 of title 31, United States Code, all fees collected under this subparagraph shall be credited to the appropriation to be used in carrying out this section.";

(B) in paragraph (2)(A)(i), by striking "(14), (15), (20), (21), (25), and (32)" and inserting "(4), (5), and (7)(A)"; and

(C) by amending subclause (III) of paragraph (2)(A)(iii) to read as follows:

"(III) paragraphs (3)(A), (3)(B), (3)(C), or (3)(E) of such section (relating to national security and participation in the Nazi persecutions or those who have engaged in genocide).".

(5) Section 245A(d)(2)(B)(ii) of the INA is amended—

(A) by striking subclause (IV),

(B) by redesignating subclause (II) as subclause (IV) and by transferring and inserting it after clause (III),

(C) by redesignating subclause (III) as subclause (II),

(D) by inserting after subclause (II) (as so redesignated) the following new subclause:

"(III) Paragraph (3) (relating to security and related grounds).", and

(E) by striking "Subclause (II)" and inserting "Subclause (IV)".

(6) Section 584(a)(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as amended by section 603(a)(20)(B) of the Immigration Act of 1990, is amended by striking "(D)" and inserting "(E)".

(7) Section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167) is amended by striking "(23)(B), (27), (29), or (33)" and inserting "(2)(C) and subparagraphs (A), (B), (C), or (E) of paragraph (3)".

(8) Section 2(a)(3) of the Immigration Nursing Relief Act of 1989 is amended by striking "212(a)(14)" and inserting "212(a)(5)(A)".

**SEC. 8. CORRECTIONS RELATING TO TITLE VII OF THE IMMIGRATION ACT OF 1990.**

Section 304(f) of the Immigration Reform and Control Act of 1986, as amended by section 704(b) of the Immigration Act of 1990, is amended—

(1) by striking "appointment in the and" and inserting "appointment and", and

(2) by striking "civil" and inserting "competitive".

(b) Section 404(b)(2)(A) of the INA, as added by section 705(a)(5) of the Immigration Act of 1990, is amended by adding at the end the following new sentence:

"In applying clause (i), the providing of parole at a point of entry in a district shall be deemed to constitute an application for asylum in the district."

**SEC. 9. ADDITIONAL MISCELLANEOUS CORRECTIONS.**

(a) Section 204 of the Immigration Reform and Control Act of 1986 is amended—

(1) in subsection (a)(1), by adding at the end the following new subparagraph:

"(D) Any amount made available for Federal administration and remaining unobligated at the end of a fiscal year shall remain available for the purposes for which it was made in subsequent fiscal years, but shall not remain available after September 30, 1994.";

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (D), by striking "temporary resident aliens" and inserting "eligible legalized aliens",

(ii) by adding "and" at the end of subparagraph (D), and

(iii) by adding at the end the following new sentence: "In subparagraph (D), the term 'eligible legalized alien' includes an alien who applies on a timely basis to become an eligible legalized alien, until the date there has been a final determination with respect to such application.";

(B) by amending subparagraph (D) of paragraph (2) to read as follows:

"(D) A State is permitted to expend of funds allotted with respect to each an amount not to exceed $100,000 (or, if greater, 1 percent) for the purposes described in each of subparagraphs (D) and (E) of paragraph (1). If a State expends with respect to a fiscal year under either such subparagraph for such purposes less than the maximum permitted under the previous sentence, the maximum amount that may be expended for such purposes with respect to the succeeding year shall be increased by the amount of such shortfall."; and

(C) in paragraph (3)(B), by striking "4105(b)(1)(A)" and inserting "3126(b)(1)(A)".

(b)(1)(A) Section 209 of the Department of Justice Appropriations Act, 1989 (title II of Public Law 100–459, 102 Stat. 2203) is amended—

(i) in subsection (a)—

(I) by striking "Title 8, United States Code, section 1356 is amended by adding" and inserting "Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end", and

(II) in the subsection (o) added by such subsection, by striking "will" and inserting "shall"; and

(ii) by amending subsection (b) to read as follows:

"(b) Section 344(g) of the Immigration and Nationality Act (8 U.S.C. 1455(g)) is amended by inserting after 'Treasury of the United States' the following: 'except that all such fees collected or paid over on or after October 1, 1988, shall be deposited in the Immigration Examinations Fee Account established under section 286(m)'.".

(B) The fourth proviso under Immigration and Naturalization Service in the Department of Justice Appropriations Act, 1990 (title II of Public Law 101–162, 103 Stat. 1000) is amended to read as follows: ": *Provided further*, That section 286(n) of the Immigration and Nationality Act (8 U.S.C. 1356(n)) is amended by striking 'in excess of $50,000,000' and by striking the second sentence".

(2)(A) Section 286 of the INA, as amended by section 210 of the Department of Justice Appropriations Act, 1991, is amended—

(i) in subsection (h)(1)(A), by insert a period after "available until expended",

(ii) in subsection (m), by striking "additonal" and inserting "additional", and

(iii) in subsection (q)(5)(B), by striking "subsection (q)(1)" and inserting "paragraph (1)".

(B) Section 210(a)(2) of the Department of Justice Appropriations Act, 1990, is amended by striking "in which fees" and inserting "in which the fees".

(3) The amendments made by paragraph (1) and (2) shall be effective as if they were included in the enactment of the Department of Justice Appropriations Act, 1989 and the Department of Justice Appropriations Act, 1990, respectively.

(c)(1) Section 101(a)(15)(D)(i) of the INA is amended by inserting a comma after "States)".

(2) The item in the table of contents of the INA relating to section 242A is amended by striking "Procedures" and inserting "procedures".

(3) The item in the table of contents of the INA relating to section 345 is repealed.

(4) Section 101(c)(1) of the INA is amended by striking "322, and 323" and inserting "and 322".

(5) Section 204(f)(4)(A)(ii)(II) of the INA, as redesignated by section 162(d)(6) of the Immigration Act of 1990, is amended by striking "section 652 of such Act" and inserting "the second and third sentences of such section".

(6) Paragraph (3) of section 210(d)(3) of the INA is amended—

(A) by indenting the paragraph (and its subparagraphs) 2 ems to the right;

(B) by striking "the Immigration and Naturalization Service (INS) pursuant to section 210(d) of the Immigration and Nationality Act (INA)" and inserting "Service pursuant to this subsection";

(C) in the matter before subparagraph (A), by striking "INS" each place it appears and inserting "Service";

(D) in subparagraph (A), by striking "as defined in section 210(a)(1)(A) of the INA the INS" and inserting "described in subsection (a)(1)(A) the Service";

(E) in subparagraph (A) by striking "in the INA" and inserting "in this Act";

(F) in subparagraph (B), by striking "as defined in section 210(a)(1)(B)(1)(B) of the INA" and inserting "described in subsection (a)(1)(A)"; and

(G) in subparagraph (B), by striking "section 210(b)(1)(A)" and inserting "subsection (b)(1)(A)".

(7) Section 212(j) of the INA is amended—

(A) by striking "International Communication Agency" in paragraphs (1)(D) and (3) and inserting "United States Information Agency",

(B) by striking paragraph (2), and

(C) by redesignating paragraph (3) as paragraph (2).

(8) Section 218(i)(1) of the INA is amended by striking "274A(g)" and inserting "274A(h)(3)".

(9) Section 274A(b)(1)(D)(ii) of the INA is amended by striking "clause (ii)" and inserting "clause (i)".

(10) Section 313(a)(2) of the INA is amended by inserting "and" before "(F)" and by striking "; (G)" and all that follows through "of 1950" the second place it appears.

(11) Section 286(e)(1)(D) of the INA is amended by striking "of this title".

(12) Section 330 of the INA is amended by striking "of this subsection" and inserting "of this section".

(13) Section 344(c) of the INA, as redesignated by section 407(d)(19)(F) of the Immigration Act of 1990, is amended by striking "of this subchapter" and inserting "of this title".

SEC. 10. EFFECTIVE DATES.

Except as otherwise specifically provided, the amendments made by (and provisions of)—

(1) sections 2 through 8 shall take effect as if included in the enactment of the Immigration Act of 1990,

(2) section 9(a) shall be effective with respect to allotments for fiscal years beginning with fiscal year 1989, and

(3) section 9(c) shall take effect on the date of the enactment of this Act.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

## LAND REMOTE—SENSING DATA ARCHIVING AUTHORIZATION ACT OF 1991

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 112, S. 230, a bill relating to the NOAA program transfers.

The PRESIDING OFFICER. The clerk bill report.

The legislative clerk read as follows:

A bill (S. 230) to authorize the transfer of certain programs and functions of the National Oceanic and Atmospheric Administration to the Department of the Interior, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment.

On page 3, line 11, strike "4244(b)(4)", and insert in lieu thereof "4242(b)(4)"

The Committee amendment was agreed to.

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

S. 230

*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 "Land Remote-Sensing Data Archiving Authorization Act of 1991".

TRANSFER OF DATA ARCHIVING RESPONSIBILITY

SEC. 2. (a) FINDINGS.—The Congress finds that—

(1) section 602 of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4272) directs the Secretary of Commerce to provide for the archiving of land remote-sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) the Secretary of Commerce currently provides for the archiving of Landsat data at the Department of the Interior's EROS Data Center, which is consistent with the requirement of section 602(g) of such Act (15 U.S.C. 4272(g)) to use existing Federal Government facilities to the extent practicable in carrying out this archiving responsibility;

(3) the Landsat data collected since 1972 are an important global data set for monitoring and assessing land resources and global change;

(4) the Secretary of the Interior maintains archives of aerial photography, digital cartographic data, and other Earth science data at the EROS Data Center that also are important data sets for monitoring and assessing land resources and global change;

(5) it is appropriate to transfer authority to the Secretary of the Interior for the archiving of land remote-sensing data; and

(6) the Secretary of the Interior should explore ways to facilitate the use of archived data for research purposes consistent with other provisions of the Land Remote-Sensing Commercialization Act of 1984.

(b) PROVISION OF UNENHANCED DATA.—Section 402(b)(4) of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4242(b)(4)) is amended by inserting "of the Interior" immediately after "Secretary".

(c) ARCHIVING OF DATA.—Section 602 of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4272) is amended—

(1) in subsections (b), (c), (d), (f), and (g), by inserting "of the Interior" immediately after "Secretary" each place it appears; and

(2) by adding at the end the following new subsection:

"(h) In carrying out the functions of this section, the Secretary of the Interior shall consult with the Secretary to ensure that archiving activities are consistent with the terms and conditions of any contract or agreement entered into under title II, III, or V of this Act and with any license issued under title IV of this Act.".

Mr. BREAUX. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by , 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 and a treaty which were referred to the appropriate committees.

(The nominations and treaty received today are printed at the end of the Senate proceedings.)

## MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 2:08 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 1047. An act to amend title 38, United States Code, to make miscellaneous improvements in veterans' compensation, pension life insurance, health-care, and facilities management programs, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore [Mr. BYRD].

At 2:51 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2427) making appropriations for energy and water development for the fiscal year ending September 30, 1992, and for other purposes; it recedes from its disagreement to the amendments of the Senate numbered 4, 10, 15, 28, 49, and 53 to the bill, and agrees thereto; and it recedes from its disagreement to the amendments of the Senate numbered 2, 7, 8, 9, 12, 13, 14, 21, 22, 23, 24, 30, 31, 32, 34, 36, 39, 45, 47, and 48 to the bill, and agrees thereto, each with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2801. An act to authorize the minting of legal tender coins to commemorate the 1994 World Cup and to provide a financial legacy to youth and amateur soccer in the United States.

At 5:58 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the bill (S. 1593) to improve the operation and effectiveness of the United States Commission on Libraries and Information Science, and for other purposes; without amendment.

The message also announced that the House has agreed to the concurrent resolution (S. Con. Res. 39) to authorize the printing of "The Dome of the United States Capitol: An Architectural History", prepared by the Office of the Architect of the Capitol; without amendment.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2699) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1992; it recedes from its disagreement to the amendments of the Senate numbered 7 and 25 to the bill, and agrees thereto; that the House recedes from its disagreement to the amendments of the Senate numbered 2, 15, 17, 18, 23, 24, and 26 to the bill, and agrees thereto, each with an amendment, in which it requests the concurrence of the Senate; and that it insists upon its disagreement to the amendment of the Senate numbered 10 to the bill.

The message also announced that the House agrees to the amendment of the

Senate to the bill (H.R. 2313) to amend the School Dropout Demonstration Assistance Act of 1988 to extend the authorization of appropriations through fiscal year 1993, and for other purposes.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 904) to direct the Secretary of the Interior to prepare a national historic landmark theme study on African American history.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 1143) to authorize a study of nationally significant places in American labor history.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1107. An act to establish a silver congressional commemorative medal for members of the United States Armed Forces who serve in a combat zone in connection with the Persian Gulf conflict.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 6:28 p.m., a message from the House of Representatives announced that the Speaker has signed the following enrolled bills and joint resolution:

H.R. 1455. An act to authorize appropriations for fiscal year 1991 for intelligence activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes;

H.R. 1779. An act to designate the Federal building being constructed at 77 West Jackson Boulevard in Chicago, Illinois, as the "Ralph H. Metcalfe Federal Building";

H.R. 2901. An act to authorize the transfer by lease of 4 naval vessels to the Government of Greece; and

H.J. Res. 264. Joint resolution designating August 1, 1991, as "Helsinki Human Rights Day."

The enrolled bills and joint resolution were subsequently signed by the President pro tempore [Mr. BYRD].

## MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 1107. An act to establish a silver congressional commemorative medal for members of the United States Armed Forces who served in a combat zone in connection with the Persian Gulf conflict; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 2801. An act to authorize the minting of legal tender coins to commemorate the 1944 World Cup and to provide a financial legacy to youth and amateur soccer in the United States; to the Committee on Banking, Housing, and Urban Affairs.

## MEASURES PLACED ON THE CALENDAR

Pursuant to the order of the Senate of July 30, 1991, the Committee on Environment and Public Works was discharged from the further consideration of the following bill, which was placed on the calendar:

S. 668. A bill to authorize consolidated grants to Indian tribes to regulate environmental quality on Indian reservations.

## ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, August 1, 1991, he had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 40. Joint resolution designating the week beginning September 8, 1991, and the week beginning September 6, 1992, each as "National Historically Black Colleges Week."

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1711. A communication from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to amend section 806 of the Military Family Act of 1985 relating to employment opportunities for spouses of Department of Defense employees who are dislocated as a condition of employment to include spouses of certain civilian employees of the Department of Defense; to the Committee on Armed Services.

EC–1712. A communication from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to amend title 10, United States Code, to modify and extend the authority of the Secretary of Defense to waive reimbursement for certain costs incurred in the NATO Airborne Warning and Control System (AWACS) program; to the Committee on Armed Services.

EC–1713. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC–1714. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC–1715. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC–1716. A communication from the Administrator of General Services, transmitting, pursuant to law, informational copies of certain reports; to the Committee on Environment and Public Works.

EC–1717. A communication from the Chairman of the Physician Payment Review Commission, transmitting, pursuant to law, the Commission's report on the Notice of Proposed Rulemaking released by the Health Care Financing Administration on June 5, 1991; to the Committee on Finance.

EC–1718. A communication from the Assistant Secretary of the Treasury (Legislative Affairs) and the Assistant Secretary of State (Legislative Affairs), transmitting jointly, pursuant to law, the second report on foreign contributions on response to the Persian Gulf Crisis; to the Committee on Foreign Relations.

EC–1719. A communication from the Secretary of State, transmitting, pursuant to law, a determination to waive the transfer of foreign assistance funds under the Fishermen's Protective Act; to the Committee on Foreign Relations.

EC–1720. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–74 adopted by the Council on July 2, 1991; to the Committee on Governmental Affairs.

EC–1721. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–75 adopted by the Council on July 2, 1991; to the Committee on Governmental Affairs.

EC–1722. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–76 adopted by the Council on July 2, 1991; to the Committee on Governmental Affairs.

EC–1723. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–77 adopted by the Council on July 2, 1991; to the Committee on Governmental Affairs.

EC–1724. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–78 adopted by the Council on July 2, 1991; to the Committee on Governmental Affairs.

EC–1725. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–79 adopted by the Council on July 2, 1991; to the Committee on Governmental Affairs.

EC–1726. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–80 adopted by the Council on July 2, 1991; to the Committee on Governmental Affairs.

EC–1727. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–81 adopted by the Council on July 2, 1991; to the Committee on Governmental Affairs.

EC–1728. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–82 adopted by the Council on July 2, 1991; to the Committee on Governmental Affairs.

EC–1729. A communication from the Archivist of the United States, transmitting, pursuant to law, the annual report of the Archivist of the United States for fiscal year 1990; to the Committee on Governmental Affairs.

EC–1730. A communication from the Assistant Attorney General (Legislative Affairs), transmitting, pursuant to law, the annual report of the Office of Juvenile Justice and Delinquency Prevention for fiscal year 1990; to the Committee on the Judiciary.

EC–1731. A communication from the Secretary of Labor, transmitting a draft of pro-

posed legislation to extend the authorization for the Older American Community Service Employment Program, and for other purposes; to the Committee on Labor and Human Resources.

EC–1732. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, proposed regulations governing matching fund submission and certification procedures for Presidential primary candidates; to the Committee on Rules and Administration.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

H.R. 1006. A bill to authorize appropriations for fiscal year 1992 for the Federal Maritime Commission, and for other purposes (Rept. No. 102–134).

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S. 525. A bill granting an extension of patent to the United Daughters of the Confederacy.

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 646. A bill to amend title 28, United States Code, to authorize the appointment of additional bankruptcy judges.

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S. 967. A bill providing for 14-year extension of the patent for the badge of American Legion Auxiliary.

S. 968. A bill providing for a 14-year extension of the patent for the badge of the Sons of the American Legion.

S. 969. A bill providing for a 14-year extension of the patent for the badge of the American Legion.

## 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. BAUCUS:

S. 1610. A bill to amend the Internal Revenue Code of 1986 to simplify the application of the provisions relating to deposit requirements for employment taxes; to the Committee on Finance.

By Mr. SARBANES (for himself and Mr. SASSER):

S. 1611. A bill to provide for a Federal Open Market Advisory Committee, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SYMMS:

S. 1612. A bill to amend the Internal Revenue Code of 1986 to modify the substantiation requirements for reimbursement arrangements; to the Committee on Finance.

By Mr. MACK:

S. 1613. A bill for the relief of Major Ralph Edwards; to the Committee on Armed Services.

By Mr. GRAHAM (for himself and Mr. HOLLINGS):

S. 1614. A bill to amend the Rehabilitation Act of 1973 to revise and extend the program regarding independent living services for older blind individuals, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. KASTEN:

S. 1615. A bill to repeal the provision of the Internal Revenue Code of 1986 which provides that the accumulated earnings tax shall be applied without regard to the number of shareholders in the corporation; to the Committee on Finance.

By Mr. CRANSTON (by request):

S. 1616. A bill to amend title 38, United States Code, to permit the Secretary of Veterans Affairs to declare an open season during which veterans with participating National Service Life Insurance policies can purchase paid-up, additional insurance with their dividend credits and deposits whenever the Secretary determines that it is administratively and actuarially sound for each program of insurance; to the Committee on Veterans Affairs.

By Mr. SYMMS (for himself and Mr. D'AMATO):

S. 1617. A bill to amend the Internal Revenue Code of 1986 to provide protection for taxpayers, and for other purposes; to the Committee on Finance.

By Mr. NICKLES (for himself and Mr. BOREN):

S. 1618. A bill to permit the Mountain Park Master Conservancy District in Oklahoma to make a payment to satisfy certain obligations to the United States, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MCCAIN:

S. 1619. A bill to amend the National Energy Conservation Policy Act to establish a water conservation requirement for Federal buildings, and for other purposes; to the Committee on Environment and Public Works.

By Mr. KENNEDY (for himself and Mr. SIMPSON):

S. 1620. A bill to make technical corrections with respect to the Immigration Act of 1990 and other immigration laws; considered and passed.

By Mr. KOHL (for himself, Mr. GLENN and Mr. LEVIN):

S. 1621. A bill to improve supervision and regulation of Government Sponsored Enterprises; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KENNEDY (for himself and Mr. METZENBAUM):

S. 1622. A bill to amend the Occupational Safety and Health Act of 1970 to improve the provisions of such Act with respect to the health and safety of employees, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DECONCINI (for himself, Mr. INOUYE, Mr. HATCH, Mr. KENNEDY, Mr. LEAHY, Mr. BURNS, Mr. GORTON, Mr. GORE, Mr. GRASSLEY, Mr. D'AMATO, Mr. CRANSTON, and Mr. BREAUX):

S. 1623. A bill to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes; to the Committee on the Judiciary.

By Mr. BREAUX (for Mr. MITCHELL):

S.J. Res. 187. A joint resolution to make a technical correction in Public Law 101–549; considered and passed.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE:

S. Res. 165. A resolution to amend the Standing Rules of the Senate; to the Committee on Rules and Administration.

By Mr. COATS (for himself and Mr. SIMPSON):

S. Res. 166. A resolution expressing the sense of the Senate that, in light of current economic conditions, the Federal excise taxes on gasoline and diesel fuel should not be increased; to the Committee on Finance.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAUCUS:

S. 1610. A bill to amend the Internal Revenue Code of 1986 to simplify the application of the provisions relating to deposit requirements for employment taxes; to the Committee on Finance.

### DEPOSIT REQUIREMENTS FOR EMPLOYMENT TAXES

• Mr. BAUCUS. Mr. President, small business is the backbone of our country. They account for most of the jobs and for many areas they are a lynch pin in the social fabric.

Yet, small business faces many difficulties, not the least of which is the complexity of our Tax Code. That is why I am today introducing a bill to amend the Internal Revenue Code of 1986 which will simplify one aspect of the code relating to payroll tax deposits.

All employers are all required to withhold Federal income and Social Security taxes from the paychecks of their employees. These withheld taxes must be deposited in a Federal depository bank according to a schedule established by Internal Revenue Service [IRS] regulations.

Unfortunately, the current deposit rules are too complex. Every year one out of every three employers is penalized for not depositing these withheld taxes according to the regulations. A good number of these penalties fall on small employers, who because of small changes in their payroll, are subject to changes in their deposit schedules from one month to the next.

Employers are not the only ones unable to figure out this system. In 1988, the IRS had to return almost half of the money they collected from these penalties because the IRS had calculated the penalty incorrectly.

We need a simpler system. The bill I am introducing today will eliminate the great amount of uncertainty that surrounds the current system and allow employers to more easily determine when they must deposit the taxes they have withheld from their employees.

Under current law, the frequency with which an employer must deposit varies. The deposit schedule an employer must follow changes according to the amount of employment taxes withheld by the employer and how often employers pay their employees.

If an employer collects less than $500 a quarter in employment taxes, the employer deposits the amount collected at the end of the quarter.

Employers collecting more than $500 a quarter, but less than $3,000 a month, deposit the employment taxes they have withheld by the 15th day of the following month.

Employers collecting more than $3,000 a month, but less than $100,000, deposit 3 days after 8 monthly trigger dates. The confusion surrounding these trigger dates is one of the primary source of penalties.

Employers collecting more than $100,000 must deposit their withheld taxes the next banking day.

The confusing part for employers is that they must continually monitor the amount of money withheld from their employees because their deposit schedule could change, from quarterly, to monthly, to every other day, in some cases.

It is little wonder that one of every three employers ends up receiving a penalty for not doing this right. Most employers who are penalized under current law trip up because they cannot figure out when they are supposed to deposit their taxes. Businesses' payrolls, and therefore withheld taxes, vary with the business cycle—sometimes their payroll is increasing, sometimes decreasing.

Consequently they may cross the thresholds from less frequent to more frequent payments, and back again, several times a year. With each change in the payment schedule the likelihood of missing a deposit date and incurring a penalty increase. In fact this section of the Tax Code generates the most penalties for small businesses.

My bill would greatly simplify current law by reducing the number of deposit schedules, and therefore, cut the nunber of employers who may be subject to different schedules in any one year. It also allows employers to look back to the amount of past withholdings to determine how often they should deposit their taxes, rather than having to change deposit schedules immediately upon crossing a dollar threshold.

This bill requires employers who withhold less than $6,000 a month to make their deposit once a month. Employers who withhold more than $6,000 a month would have to deposit on a Tuesday or Friday following the date of payroll. Those withholding in excess of $100,000 would be required to deposit on the next banking day.

This legislation would also change current law to allow employers to look back to previous quarters to determine what deposit schedule they had to follow. For example, if an employer in any quarter in the previous year withheld more than $18,000, he would have to deposit his current withheld taxes after every payroll. If he withheld less than $18,000, he would only have to deposit once a month. Unlike current law, he would be certain that the schedule would not change in midmonth.

To stay within the budgetary constraints, the bill also reduces the margin of error allowance from 5 percent to 2 percent. With a simpler, easier to calculate, system there is less need for such a large margin for error. But in an economic environment where business is crying out for tax simplification, we should not allow the current overly complex system to continue. This Nation's tax system is built on voluntary compliance, and nothing undermines this more than having taxpayers penalized because of needlessly confusing regulations.

Mr. President, I look forward to working with my colleagues on this legislation, and I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 1610

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SIMPLIFICATION OF DEPOSIT REQUIREMENTS FOR SOCIAL SECURITY, RAILROAD RETIREMENT, AND WITHHELD INCOME TAXES.**

(a) IN GENERAL.—Subsection (g) of section 6302 of the Internal Revenue Code of 1986 (relating to deposits of social security taxes and withheld income taxes) is amended to read as follows:

"(g) DEPOSITS OF SOCIAL SECURITY, RAILROAD RETIREMENT, AND WITHHELD INCOME TAXES.—

"(1) GENERAL RULE.—Except as otherwise provided in this subsection—

"(A) employment taxes attributable to payments on Wednesday, Thursday, or Friday of any week shall be deposited on or before the following Tuesday, and

"(B) employment taxes attributable to payments on Saturday, Sunday, Monday, or Tuesday of any week shall be deposited on or before the following Friday.

"(2) SMALL DEPOSITORS.—

"(A) IN GENERAL.—If any person is a small depositor for any calendar quarter, such person shall make deposits of employment taxes attributable to payments during any month in such quarter on or before the 15th day of the following month.

"(B) SMALL DEPOSITOR.—For purposes of this subsection, a person is a small depositor for any calendar quarter if, for each calendar quarter in the base period, the average monthly amount of employment taxes attributable to payments made by such person during such calendar quarter did not exceed $6,000. For purposes of the preceding sentence, the base period for any calendar quarter is the 4 calendar quarters ending with the second preceding calendar quarter.

"(C) CESSATION AS SMALL DEPOSITOR.—A person shall cease to be treated as a small depositor for a calendar quarter after any day on which such person is required to make a deposit under paragraph (3).

"(3) LARGE DEPOSITORS.—Notwithstanding paragraphs (1) and (2), if, on any day, any person has $100,000 or more of employment taxes for deposit, such taxes shall be deposited on the next day.

"(4) SAFE HARBOR.—

"(A) IN GENERAL.—A person shall be treated as depositing the required amount of employment taxes in any deposit if the shortfall does not exceed the greater of—

"(i) $250, or

"(ii) 2 percent of the amount of employment taxes required to be deposited in such deposit (determined without regard to this paragraph). Such shortfall shall be deposited as required by the Secretary by regulations.

"(B) SHORTFALL.—For purposes of this paragraph, the term "shortfall' means, with respect to any deposit, the excess of the amount of employment taxes required to be deposited in such deposit (determined without regard to this paragraph) over the amount (if any) thereof deposited on or before the last date prescribed therefor.

"(5) DEPOSIT REQUIRED ONLY ON BANKING DAYS.—If taxes are required to be deposited under this subsection on any day which is not a banking day, such taxes shall be treated as timely deposited if deposited on the first banking day thereafter.

"(6) EMPLOYMENT TAXES.—For purposes of this subsection, the term 'employment taxes' means the taxes imposed by chapters 21, 22, and 24.

"(7) SUBSECTION TO APPLY ONLY TO REQUIRED DEPOSITS.—This subsection shall not apply to employment taxes which are not required to be deposited under the regulations prescribed by the Secretary under this section.

"(8) REGULATIONS.—The Secretary may prescribe regulations—

"(A) specifying employment tax deposit requirements for persons who fail to comply with the requirements of this subsection,

"(B) specifying circumstances under which a person shall be treated as a small depositor for purposes of this subsection notwithstanding that such person is not described in paragraph (2)(B),

"(C) specifying modifications to the provisions of this subsection for end-of-quarter periods, and

"(D) establishing deposit requirements for taxes imposed by section 3406 which apply in lieu of the requirements of this subsection."

(b) CONFORMING AMENDMENT.—Section 226 of the Railroad Retirement Solvency Act of 1983 is hereby repealed.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts attributable to payments made after December 31, 1992.●

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By Mr. SARBANES (for himself and Mr. SASSER):

S. 1611. A bill to provide for a Federal Open Market Advisory Committee, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

MONETARY POLICY REFORM ACT

Mr. SARBANES. Mr. President, today I am introducing the Monetary Policy Reform Act of 1991, along with my colleague, Senator JIM SASSER, chairman of the Senate Budget Committee. A companion bill is being introduced in the House of Representatives by Representative LEE. H. HAMILTON, vice chairman of the Joint Economic Committee, and Representative BYRON DORGAN.

The purpose of the Monetary Policy Reform Act is to dissolve the Federal Open Market Committee and make the Board of Governors of the Federal Re-

serve System solely responsible for the conduct of monetary policy, including the open market operations that determine interests rates.

The need for this bill is rooted both in the recent conduct of monetary policy and the 70-year history of the Federal Reserve System.

Earlier this year, while the Nation's economy was deep in its 9th postwar recession, reports surfaced about a disturbing split among policymakers at the Federal Reserve. Important changes in monetary policy proposed by Federal Reserve Board Chairman Alan Greenspan were being resisted by the presidents of some of the regional Federal Reserve Banks. In a democratic government, it is not unusual for policymakers to disagree. But this was not a split among Government policymakers; a small handful of individuals representing private interests was impeding efforts by responsible public officials to conduct monetary policy in the best interest of the Nation's economy.

Partly as a result of this conflict, monetary policy during the recession has come under more than the usual criticism. Slow money growth since 1988 has been frequently cited as one reason why the economy was to weak to shrug of the shock of the gulf war. When oil prices rose last fall and consumer confidence plunged, the Fed's restrictive path, it is argued, served to deepen and lengthen the recession that had begun only a short time earlier. Since the recession started, the Federal Reserve's critics point out that interest rates have fallen only half as much as in the three previous recessions, despite the need for greater monetary stimulus created by the credit crunch.

Today, the apparent revival of economic activity may diminish concerns over past policy. But it should not diminish concern about a system in which private individuals have an important role in making Government economic policy.

With fiscal policy immobilized in the struggle to reduce the Federal budget deficit, much of the responsibility for the conduct of economic policy has devolved to the Federal Reserve. But despite its power, the Fed does not conform to normal standards of government accountability and is unique among government institutions here and abroad in the pivotal role played by private individuals in making government decisions.

BACKGROUND ON DECISION MAKING AT THE FEDERAL RESERVE

The Federal Reserve System consists of the Board of Governors in Washington and the 12 regional Federal Reserve banks. The Board of Governors has seven members, who are appointed by the President and confirmed by the Senate to 14-year terms. The Governors of the Federal Reserve are thus duly appointed public officials who are responsible to the President and Congress, and through them to the American people, for their conduct in office.

The Federal Reserve bank presidents, in contrast, owe their jobs to the Boards of Directors of the regional banks—boards dominated by local commercial banks. Neither the President nor Congress has any role in selecting the presidents of the Federal Reserve banks. Some of the bank presidents are career employees, others have backgrounds in banking, business and academics; none are duly-appointed public officials. Nonetheless, they participate in monetary policy decisions through their membership on the Federal Reserve's Open Market Committee [FOMC], where they cast 5 of the 12 votes that determine monetary policy and interest rates.

Although most Government agencies—including the Fed—make extensive use of private citizens as advisers, in no other agency are major policy decisions made by individuals who are not publicly accountable.

LEGISLATIVE HISTORY

1913 FEDERAL RESERVE ACT

The legislative history of the Federal Reserve Act and later amendments suggest that the bank presidents are members of the FOMC not because they serve any useful economic function there but because of political compromises.

The role of the bank presidents in the conduct of monetary policy has always been a controversial issue. Neither Woodrow Wilson, who was President at the time the Fed was created, nor Franklin Delano Roosevelt, who was President when the banking laws were rewritten during the 1930's found any justification for having private interests represented on government bodies.

In 1913, as Congress was drafting the Federal Reserve Act, Representative Carter Glass, who was then chairman of the House Banking Committee, proposed in his draft of the Federal Reserve Act to give the Nation's banks significant representation on the Federal Reserve Board. Senator Owen, chairman of the Senate Banking Committee, strongly opposed this and held that the Government should appoint all the members of the proposed Board. Glass' compromise position was to have four members chosen by the Government and three by the banks. Owen and Glass met with President Wilson on this issue. According to Owen (see CONGRESSIONAL RECORD, Vol. 50):

> After a discussion of two hours, approximately, the President coincided with my contention that the Government should control every member of the Board on the ground that it was the function of the government to supervise this system, and no individual, however respectable should be on the Board representing private interests.

According to Glass' 1927 book, "Adventures in Constructive Finance", when a group of bankers went to the White House to protest Wilson's decision, the President turned to the bankers and said:

> Will one of you gentlemen tell me in what civilized country of the Earth there are important government boards of control on which private interests are represented?

After what Glass tells us was a "painful silence," President Wilson inquired:

> Which of you gentlemen thinks that railroads should select members of the Interstate Commerce Commission?

As a compromise, Wilson suggested that as compensation to the banks for not being on the Board, the bill should include a Federal Advisory Council, which would let representatives of the banks meet with the Federal Reserve Board periodically on a purely advisory capacity. Since Glass decided there could have been no convincing reply to either of Wilson's questions, he thereafter gave Wilson's approach his very cordial support.

Wilson's views were reflected in the report of the Senate Banking Committee on the 1913 act, which argued:

> The function of the Federal Reserve Board in supervising the banking system is a governmental function in which private persons or private interests have no right to representation, except through the Government itself.

DEVELOPMENT OF THE FEDERAL OPEN MARKET COMMITTEE

One of the most serious omissions from the Federal Reserve Act of 1913 was any Federal Reserve organ to guide open market operations. Instead, such decisions were left up to the individual Federal Reserve banks.

During the early years, the banks, which received no appropriations from Congress for operating expenses, frequently made open market purchases of Treasury bills and other financial instruments in order to gain earning assets to fund salaries and other bank expenses. Since each bank did this separately and at its own convenience, open market operations occasionally had a disruptive influence on Treasury markets.

In 1922, under pressure from the Treasury, the Governors—as the bank presidents were called before 1935—of the banks of New York, Boston, Chicago, Cleveland, and Philadelphia formed what came to be called the Open Market Investment Committee, to work out an orderly method of buying and selling Government securities. The individual Federal Reserve banks, however, were not compelled to obey this Committee; each bank decided on its own whether to follow the approved policy. The Federal Reserve Board these early days had no statutory role in open market operations.

BANKING ACT OF 1933

The Banking Act of 1933 gave the Open Market Committee statutory recognition and expanded it to include one representative of each Federal Reserve

District. But it did little to correct the impotence of the Federal Reserve Board. The Board could not initiate open market operations; it could only approve or disapprove decisions of the Open Market Committee.

When President Roosevelt appointed Marriner Eccles to head the Federal Reserve Board in 1934, Eccles proposed to give the Board increased control over monetary policy by making it, rather than the FOMC, responsible for open market operations.

The House version of the Banking Act of 1935 followed this plan by limiting membership in the Open Market Committee to Federal Reserve Board members. To mollify the Federal Reserve banks, the bill included a provision under which the Board would consult periodically with five representatives of the banks. After consultation, however, the Board would be free to follow its own judgment on monetary policy. Some, particularly Banking Committee Chairman Carter Glass, who joined the Senate in 1919 after a brief term as Treasury Secretary, resisted this plan and insisted that the power be shared with the Federal Reserve banks. The final version of the act compromised on this issue by creating an FOMC which included as voting members the seven members of the Board of Governors and a rotating group of five Federal Reserve bank presidents. As part of the compromise, the FOMC's policy on open market operations was made binding on the Federal Reserve banks. Authority and responsibility for monetary policy was thus centralized in the FOMC, though not in the Federal Reserve Board.

MONETARY POLICY IN OTHER COUNTRIES

This arrangement of giving private individuals a substantial voice in the conduct of monetary policy finds little support in the practice of central banking abroad. A study recently prepared for the Joint Economic Committee on central bank-government relations in the major industrialized countries found that central bank officials who make monetary policy decisions elsewhere are all duly appointed public officials who are accountable only to the people and not to special interests. In most instances, the policymakers are appointed by the Prime Minister, with input from other Ministers, usually Treasury, or Parliament. Where central bank officials that are not directly appointed by the Government have a role, as in Italy, it is usually advisory; ultimate responsibility still rests with Government appointees. Even in Germany, which reputedly has the most independent of all central banks, the 11 Land Bank presidents who participate in monetary policy decisions are all appointed by the upper house of the German Parliament. In no instance abroad do private individuals have a binding vote as they do here.

THE MONETARY POLICY REFORM ACT OF 1991

The Monetary Policy Reform Act of 1991, which I am introducing today, would fulfill the original intentions of Presidents Wilson and Roosevelt by making the Board of Governors solely responsible for the conduct of monetary policy. The bill would do two things. First, the FOMC as presently constituted would be dissolved and its responsibilities would be taken over by the Board of Governors. Second, a Federal Open Market Advisory Council would be created, composed of the presidents of the 12 Federal Reserve banks. Through this Federal Open Market Advisory Council, the bank presidents would have an important consultative role on monetary policy, but would not have a vote. The Fed would still have the benefit of the bank presidents' advice, but monetary policy decisions would be the responsibility of properly appointed public officials.

Power without accountability does not fit the American system of democracy. In no other government agency do private individuals make government policy. The Monetary Policy Reform Act of 1991 will now apply this same principle of democracy to the Federal Reserve.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD following my remarks.

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

S. 1611

*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 "Monetary Policy Reform Act of 1991".

**SEC. 2. MEMBERSHIP OF THE FEDERAL OPEN MARKET ADVISORY COMMITTEE.**

Section 12A(a) of the Federal Reserve Act (12 U.S.C. 263(a)) is amended to read as follows:

"(a)(1) There is established a Federal Open Market Advisory Committee (hereinafter referred to as the 'Advisory Committee'), which shall consist of the presidents of the Federal Reserve banks. The president of the Federal Reserve Bank of New York shall be the chairperson of the Advisory Committee. The meetings of the Advisory Committee shall be held in Washington, District of Columbia, not less than 4 times a year upon the call of the Board of Governors of the Federal Reserve System.

"(2) The Advisory Committee shall advise the Board on the conduct of open-market operations.".

**SEC. 3. CONFORMING AMENDMENTS.**

(a) IN GENERAL.—Section 12A(b) of the Federal Reserve Act (12 U.S.C. 263(b)) is amended by striking "Committee" each place it appears and inserting "Board".

(b) UNITED STATES OBLIGATIONS.—Section 14(b)(2) of the Federal Reserve Act (12 U.S.C. 355(2)) is amended by striking "Federal Open Market Committee" and inserting "Board".

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By Mr. SYMMS:

S. 1612. A bill to amend the Internal Revenue Code of 1986 to modify the sustantiation requirements for reimbursement arrangements; to the Committee on Finance.

MODIFICATION OF SUBSTANTIATION REQUIREMENTS FOR REIMBURSEMENT ARRANGEMENTS

• Mr. SYMMS. Mr. President, I rise today to introduce legislation correcting a provision of the tax code that is slam-dunking the working men and women in the timber industry and which threatens to do the same in industries throughout the country.

The provision I am referring to was an apparently innocuous change made in the 1988 Family Support Act in the tax treatment of reimbursement or allowance agreements between employers and employees. These are common arrangements whereby an employee provides his own tools and the employer compensates the employee for the use of those tools under a reimbursement agreement. In other words, the employer pays a wage and a reimbursement or allowance, both of which are included in the employee's gross income for tax purposes. Until recently, however, the reimbursement could be excluded again as an adjustment to gross income, that is, it was excludable above-the-line.

In the timber industry, for example, the men and women who go out and cut the timber are called sawyers. Sawyers are required as a condition of their employment to supply their own equipment including chainsaws, extra chain, trucks, track skidders, et cetera. To compensate the sawyers for the wear and tear on their equipment, an employer will pay a set amount each month under a reimbursement agreement in addition to the employee's stated wage. This additional amount is called saw hire. For example, under a typical arrangement, an employer might pay $2,000 each month in salary and $1,000 each month in saw hire.

There is general agreement that saw hire should not be subject to tax. The only question is whether the exclusion of saw hire should come as an adjustment to income, that is, above the line, or as a deduction in the calculation of taxable income—below the line.

Saw hire should not be subject to tax because the sawyer is really acting as an agent for his employer by buying and maintaining the equipment he needs to perform the job. This equipment is purchased on behalf of the employer and the sawyer is merely reimbursed for his out-of-pocket expenses. This rationale is particularly appropriate in the case of sawyers because they usually work in rugged, isolated regions many miles from the employer's place of business. It would be impractical for an employer to try to provide such equipment directly as needed. If a chain broke in the middle of the day, it could be many hours before an employer could get a new one to the sawyer.

As I pointed out above, until recently saw hire was clearly deductible above the line. In the 1986 Tax Reform Act, for example, Congress retained the above-the-line deduction for payments made to an employee under a reimbursement agreement arguing that an employer's agreement to reimburse these expenses meant they were a necessary expense of the employer's business. In effect, the Congress concluded that the employee was acting as an agent of the employer and paying for the item, and the net tax treatment should be as though the employer had incurred the expense directly. In my opinion, this was exactly correct.

Two years later, in the 1988 Family Support Act, the Congress drew a distinction between reimbursement agreements that required substantiation by the employee of the expenses incurred and those that did not. Agreements which do not require the employee to document reimbursable expenses are nonaccountable plans. Nonaccountable plans were less like employer costs paid by the employer, or so the Congress argued, and more like costs incurred by the employee to perform his job.

In the 1988 act, therefore, reimbursements under nonaccountable plans were moved below the line. They were still deductible, not in determining adjusted gross income but rather in going from AGI to taxable income. While this may seem like a minor change, the tax impact on sawyers, and other employees in similar situations, is enormous.

For example, in moving the deduction below the line the Congress denied the deduction to taxpayers who file as nonitemizers because only itemizers were able to take the deduction. And even those taxpayers who itemize may lose some portion of the deduction because the saw hire deduction falls under the category of a miscellaneous deduction. Miscellaneous deductions are allowed only to the extent that total miscellaneous deductions exceed 2 percent of AGI.

Finally, and perhaps most importantly, by moving the deduction below the line, the saw hire reimbursement became subject to the payroll tax at both the employer and employee levels. So not only did this dramatically reduce the taxpayer's after-tax income, it also increased taxes on timber companies.

Let me give an example of how this works. Suppose an employee earns $2,000 in wages and receives $1,000 under a reimbursement arrangement each month, his Federal income tax rate is 15 percent, and his State income tax rate is 7 percent. As the table below shows, this small change in the tax law results in a monthly increase in a sawyer's tax liability of $76.50 if he is able to itemize and $296.50 if he cannot itemize. Assuming the sawyer is able to work for 6 months a year in this profession, that is an increase in his total tax burden for the year of $459.00 if he can itemize his deductions or $1,779.00 if he cannot itemize. And, for the itemizer, this is a best case scenario because it assumes that all of the amount paid under a reimbursement arrangement exceeds the 2 percent AGI floor.

| | Old law | Current law itemizer | Current law nonitemizer |
|---|---|---|---|
| Employee: | | | |
| Wages | $2,000 | $2,000.00 | $2,000.00 |
| Sawhire | 1,000 | 1,000.00 | 1,000.00 |
| Gross income | 3,000 | 3,000.00 | 3,000.00 |
| Reimbursement exclusion | −1,000 | | |
| Adjusted gross income | 2,000 | 3,000.00 | 3,000.00 |
| Itemized deduction | | −1,000.00 | |
| Taxable income | 2,000 | 2,000.00 | 3,000.00 |
| Employee taxes: | | | |
| Federal income | 300 | 300.00 | 450.00 |
| State income | 140 | 140.00 | 210.00 |
| FICA | 153 | 229.50 | 229.50 |
| Total | 593 | 669.50 | 889.50 |
| Change in tax from prior law | | 76.50 | 296.50 |
| Employer taxes: | | | |
| FICA | 153 | 229.50 | 229.50 |
| Change in tax from prior law | | 76.50 | 76.50 |

And, of course, the employer gets stuck, too. Using the 6-month assumption, a timber employer has to pay an additional $459 each year per employee. For the companies in the Northwest struggling to survive, I can tell you, that really hurts.

Mr. President, there is a way for the employee and employer to avoid these fairly drastic results. If the employee can document the expenses for which he files for a reimbursement under a reimbursement agreement, then the employee can move the deduction back above the line as an adjustment to gross income.

The trouble is that a sawyer incurs a wide range of reimbursable costs far from the employer's place of business. Job sites are typically far removed from any semblance of a town or city. I just don't think it's reasonable to ask these people to struggle under the same kinds of paperwork burdens we habitually impose on big businesses.

In fact, this requirement reminds me of the rule we had a few years back requiring taxpayers to keep careful logs for the use of automobiles in business. This rule was unwieldy and unworkable, and the Congress finally succumbed to the outcry from the public and repealed the rule. We should do the same for saw hire.

The new rule also raises a number of difficult questions for employers. For example, how is the employer supposed to determine whether an expense is legitimate or not. Sure, in some cases that is easy enough, but in many cases it will not be, like claimed transportation expenses. And if the employer declares an expense to be appropriate under the agreement, what happens if the Service later audits the employer and disagrees?

A more difficult question is, what happens if the employer rents equipment from employees. How is the employer to treat wages versus equipment rental?

Mr. President, the curent law rule is unworkable. It is unfair. It is inconsistent with the arrangements made between employer and employee. And, worst of all, the current rule just does not make much sense. What does the question of whether the expenses are precisely accounted for have to do with whether the amount is excluded above the line or below the line? If a sawyer has a receipt for some chain then he gets to deduct the cost above the line and if he loses the receipt then he can only deduct it below the line? What kind of tax policy is that? This looks a lot like something a budding green eyeshades tax technician with no real world experience might come up with.

While I believe an outright repeal of the provision moving this deduction below the line may be the best possible policy, the bill I am introducing takes a more moderate approach. My bill does one thing. It allows any taxpayer, not just those employed in the logging industry, to move the deduction above the line to the extent the amounts received by an employee under a reimbursement arrangement are:

First, less than $15,000 for the taxable year; and

Second, less than 50 percent of the total amount of wages received during

the taxable year from the employer maintaining the arrangement.

We jerk people around enough through the Tax Code. I think this is one instance where we might let a little commonsense beat back the green eyeshades types and let people go about their business. I hope my colleagues will take a look at this and help me truly win one for working men and women.

Mr. President, I ask unanimous consent that a copy 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. 1612

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. MODIFICATION OF SUBSTANTIATION REQUIREMENTS FOR REIMBURSEMENT ARRANGEMENTS.**

(a) IN GENERAL.—Subsection (c) of section 62 of the Internal Revenue Code of 1986 (relating to certain arrangements not treated as reimbursement arrangements) is amended by adding at the end thereof the following new sentence: "Such substantiation requirements shall also not apply to an employee under an arrangement if and to the extend the aggregate amounts received by the employee under the arrangement are less than $15,000 for the taxable year and are less than 50 percent of the total amount of wages received during the taxable year from the employer maintaining the arrangement (and any other employer treated as a single employer with such employer under subsection (a) or (b) of section 52).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to reimbursements under any arrangement in taxable years beginning on or after the date of the enactment of this Act.●

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By Mr. GRAHAM (for himself and Mr. HOLLINGS):

S. 1614. A bill to amend the Rehabilitation Act of 1973 to revise and extend the program regarding independent living services for older blind individuals, and for other purposes; to the Committee on Labor and Human Resources.

INDEPENDENT OLDER BLIND INDIVIDUALS AMENDMENTS OF 1991

Mr. GRAHAM. Mr. President, today I am introducing an important bill which would help a special group of seniors.

There are approximately 2.5 million visually impaired elderly persons in the United States. Yet due to a competitive grant process under Title VII Part C of the Rehabilitation Act, several States have never received a grant under title VII–C. Last year, 16 States did not receive funds.

Several States which have high visually impaired elderly populations in the Nation, including Florida, have never received Federal funds under Title VII Part C of the Rehabilitation Act.

The Rehabilitation Act of 1973 provides comprehensive vocational rehabilitation services for individuals with physical and mental disabilities, and is scheduled for reauthorization this Congress. Public Law 102–52 recently authorized the Rehabilitation Act through 1992.

Title VII, part C or the Independent Living Services Program for the elderly blind provides outreach, glasses, and visual aids, rehabilitation, and other services to help the elderly become more self-sufficient. Title VII, part C, however, operates under a competitive grant structure which does not provide funds to many eligible persons. Last year, about 28 States had grants.

Title VII–C began as a demonstration program in 1978, but was not funded until 1986. The current program has recorded many successes, but all visually impaired seniors need access to it so they can learn to live independently, defraying the high costs of institutionalization. Additionally, States need a predictable and adequate funding source to properly run their Independent Living Services Program.

Mr. President, elderly persons are disproportionately affected by blindness because four of the five major causes of blindness are age related. The four leading causes of vision loss among the elderly are macular degeneration, cataracts, glaucoma, and diabetic retinopathy. As the over-65 year population is the fastest growing nationally, it is important that we allow all States to have access to title VII–C grants.

That is why I am introducing legislation to amend the Rehabilitation Act. The bill would require a formula grant for all states for title VII part C for fiscal years 1992–1995. It would increase the reauthorization for part C to $26 million for fiscal year 1992–1995 from the previous level of $6 million. The proposed bill would accomplish several goals: First, increase funding for the program, second, improve the process of distributing funds, third, assure a consistent funding source for programs, and fourth, provide a nationwide service delivery system to serve older blind persons.

Congressman ROYBAL, Chairman of the House Select Committee on Aging, introduced a companion bill in the House of Representatives.

It is my hope that my colleagues in the Senate join me in supporting this legislation which will significantly help this group of seniors live independently. I ask for unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 1614

*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 "Independent Older Blind Individuals Amendments of 1991".

**SEC. 2. REVISION AND EXTENSION OF PROGRAM REGARDING INDEPENDENT LIVING SERVICES FOR OLDER BLIND INDIVIDUALS.**

Section 721 of the Rehabilitation Act of 1973 (29 U.S.C. 796f) is amended to read as follows:

**"SEC. 721. ALLOTMENTS TO STATES REGARDING SERVICES FOR OLDER BLIND INDIVIDUALS.**

"(a) DEFINITIONS.—As used in this section:

"(1) DESIGNATED STATE UNIT.—The term 'designated State unit' has the meaning given such term in section 7(3), except that—

"(A) in the case of American Samoa, the appropriate State agency designated under section 101(a)(1), which need not be the Governor of American Samoa, shall be the designated State unit; and

"(B) in the case of the Trust Territory of the Pacific Islands, the appropriate State agency designated under section 101(a)(1), which need not be the High Commissioner of the Trust Territory of the Pacific Islands, shall be the designated State unit.

"(2) OLDER BLIND INDIVIDUAL.—The term 'older blind individual' means an individual—

"(A) who is not less than 55 years of age; and

"(B) who has a severe visual impairment that makes gainful employment extremely difficult, but for whom independent living goals are feasible.

"(3) STATE.—The term 'State' means each of the several States, the District of Columbia, and each territory of the United States.

"(4) TERRITORY OF THE UNITED STATES.—The term 'territory of the United States' means the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(b) ALLOTMENTS AND GRANTS.—

"(1) IN GENERAL.—The Commissioner shall, for each of the fiscal years 1992 through 1995, make an allotment for each State in an amount determined in accordance with subsection (e)(1), to pay for the Federal share of carrying out the purposes specified in subsection (c).

"(2) GRANTS TO STATES WITH SUBSTANTIAL NEED.—The Commissioner may make grants, from the amounts specified in subsection (e)(4), to pay for the Federal share of carrying out the purposes specified in subsection (c), to States whose population of older blind individuals has a substantial need for the services specified in subsection (c) relative to the populations of older blind individuals of other States.

"(3) STATE GRANTS.—A State may expend an allotment under paragraph (1) or a grant under paragraph (2) to carry out the purposes specified in subsection (c) through grants to public and nonprivate private agencies or organizations.

"(c) USE OF GRANTS.—The Commissioner may not make an allotment under paragraph (1), or a grant under paragraph (2), of subsection (b), unless the State involved agrees that the allotment or grant will be expended only for purposes of—

"(1) providing independent living services to older blind individuals;

"(2) conducting activities that will improve or expand services for such individuals; and

"(3) conducting activities to help improve public understanding of the problems of such individuals.

"(d) INDEPENDENT LIVING SERVICES.—Independent living services for purposes of subsection (c)(1) include—

"(1) services to help correct blindness, such as—

"(A) outreach services; and

"(B) visual screening;

"(2) the provision of eyeglasses and other visual aids;

"(3) the provision of services and equipment to assist an older blind individual to become more mobile and more self-sufficient;

"(4) mobility training, Braille instruction, and other services and equipment to help an older blind individual adjust to blindness;

"(5) guide services, reader services, and transportation; and

"(6) any other appropriate service designed to assist a blind individual in coping with daily living activities, including supportive services and rehabilitation teaching services.

"(e) AWARD OF ALLOTMENTS AND GRANTS.—

"(1) IN GENERAL.—Subject to the extent of amounts made available in appropriations Acts, the amount of an allotment under subsection (b)(1) for a State for a fiscal year shall be the greater of—

"(A) the amount determined under paragraph (2); and

"(B) the amount determined under paragraph (3).

"(2) GENERAL CALCULATION.—

"(A) STATE; DISTRICT OF COLUMBIA; COMMONWEALTH OF PUERTO RICO.—In the case of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, the amount referred to in subparagraph (A) of paragraph (1) for a fiscal year is the greater of—

"(i) $225,000; and

"(ii) an amount equal to 1/3 of 1 percent of the amount appropriated under section 741(c) for the fiscal year and available for allotments under subsection (b).

"(B) OTHER TERRITORIES.—In the case of the territories of the United States other than the Commonwealth of Puerto Rico, the amount referred to in subparagraph (A) of paragraph (1) for a fiscal year is $40,000.

"(3) AGE-BASED CALCULATION.—The amount referred to in subparagraph (B) of paragraph (1) for a State for a fiscal year is the product of—

"(A) the amount appropriated under section 741(c) and available for allotments under subsection (b); and

"(B) a percentage equal to the quotient of—

"(i) an amount equal to the number of individuals residing in the State who are not less than 55 years of age; divided by

"(ii) an amount equal to the number of individuals residing in the United States who are not less than 55 years of age.

"(4) AMOUNTS FOR GRANTS TO STATES WITH SUBSTANTIAL NEED.—The amounts referred to in subsection (b)(2) are any amounts that are not paid to States under subsection (b)(1) as a result of—

"(A) the failure of any State to submit an application under subsection (f);

"(B) the failure of any State to prepare within a reasonable period of time such application in compliance with such subsection; or

"(C) any State informing the Commissioner that the State does not intend to expend the full amount of the allotment made for the State under subsection (b)(1).

"(f) APPLICATIONS.—The Commissioner may not make an allotment under paragraph (1), or a grant under paragraph (2), of subsection (b), to a State unless the State submits an application for the allotment or grant to the Commissioner at such time, in such manner, and containing such agreements, assurances, and information as the Commissioner determines to be necessary to carry out this section. At a minimum, the application shall contain—

"(1) an assurance that the State agrees that the allotment or grant will be administered solely by the designated State unit that is authorized to provide vocational rehabilitation services to the adult blind in the State;

"(2) an assurance that the State agrees to pay (directly or through donations from public or private entities) for the non-Federal share of the costs of carrying out the purposes specified in subsection (c) in accordance with subsection (g); and

"(3) an assurance that the State agrees that, in carrying out subsection (c)(1), the State will seek to incorporate into the State plan under section 705 any new methods and approaches relating to independent living services for older blind individuals.

"(g) FEDERAL SHARE.—

"(1) IN GENERAL.—The Federal share of the cost of carrying out the purposes specified in subsection (c) shall be 90 percent.

"(2) DETERMINATION.—The non-Federal share of the cost of carrying out the purposes specified in subsection (c) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal share.".

**SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

Section 741(c) of the Rehabilitation Act of 1973 (29 U.S.C. 796i(c)) is amended—

(1) by striking "and" after "1990,"; and

(2) by inserting before the period the following: ", and $26,000,000 for each of the fiscal years 1992 through 1995".

**SEC. 4. EFFECTIVE DATE.**

The amendments made by this Act shall take effect October 1, 1991, or on the date of the enactment of this Act, whichever occurs later.

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By Mr. KASTEN:

S. 1615. A bill to repeal the provision of the Internal Revenue Code of 1986 which provides that the accumulated earnings tax shall be applied without regard to the number of shareholders in the corporation; to the Committee on Finance.

REPEAL OF PROVISION APPLYING THE ACCUMULATED EARNINGS TEST TO CORPORATIONS

Mr. President, I am most pleased to introduce legislation which would repeal section 532(c) of the Internal Revenue Code which applies the accumulated earnings tax [AET] to widely held corporations.

In 1984, Congress enacted legislation creating section 532(c) as a response to the tax avoidance practiced by the so-called tax managed corporations. Simply stated, tax-managed corporations were created for the sole purpose of purchasing the dividend-paying stock of other corporations and, then, rather than paying dividends to their own shareholders, they would simply accumulate that income.

In this way, when a shareholder would sell his or her stock, he or she would pay taxes on its enhanced value at capital gains rates rather than at the ordinary income rates he or she would have paid on any dividends that stock should have declared and paid to that shareholder. In 1984, this meant a 60-percent tax savings to a taxpayer in the highest marginal ordinary income rate.

So, in 1984, the AET was an understandable response to a classic tax avoidance scheme. However, since 1986, the differential between capital gains rates and ordinary income rates has either been marginal or nonexistent. There no longer is any financial incentive to accumulating income rather than distributing the same as dividends. Section 532(c) is, therefore, superfluous and should be removed from the code.

Unfortunately, Mr. President, the only purpose the AET serves today is a tool for IRS interference in the decisionmaking of corporate America. Whether a corporation chooses to accumulate a portion of its income for research, investment, or expansion is a decision for its duly elected board of directors to make, not the Internal Revenue Service. This is particularly true during our current economic downturn when we ought to be encouraging economic development through incentives for business expansion rather than discouraging the same through outdated and unnecessary provisions in our Tax Code.

Accordingly, as we consider simplification or technical corrections in the Code during the 102d Congress, I urge my colleagues to include the repeal of section 532(c) among the contents of that legislation. The accumulated earnings tax is a provision of the code whose time, indeed, has long since passed.●

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By Mr. CRANSTON (by request):

S. 1616. A bill to amend title 38, United States Code, to permit the Secretary of Veterans Affairs to declare an open season during which veterans with participating National Service Life Insurance policies can purchase paid-up, additional insurance with their dividend credits and deposits whenever the Secretary determines that it is administratively and actuarially sound for each program of insurance; to the Committee on Veterans' Affairs.

NATIONAL SERVICE LIFE INSURANCE DIVIDEND IMPROVEMENT ACT

● Mr. CRANSTON. Mr. President, as chairman of the Veterans' Affairs Committee, I am today introducing, by request, S. 1616, a bill to permit the Secretary of Veterans Affairs to declare an open season during which veterans with participating National Service Life Insurance policies can purchase additional insurance. The Secretary of Veterans Affairs submitted this legislation by letter dated July 22, 1991, to the President of the Senate.

My introduction of this measure is in keeping with the policy which I have

adopted of generally introducing—so that there will be specific bills to which my colleagues and others may direct their attention and comments—all administration-proposed draft legislation referred to the Veterans' Affairs Committee. Thus, I reserve the right to support or oppose the provisions of, as well as any amendment to, this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this point, together with the July 22, 1991, transmittal letter.

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

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

SECTION 1. This Act may be cited as the "National Service Life Insurance Dividend Improvement Act of 1991."

SECTION 2. The second sentence of section 707(c) of title 38, United States Code, is amended to read as follows:

"Upon application in writing made by the insured before February 1, 1973 or during any subsequent period for which the Secretary determines that it is administratively and actuarially sound for each program of insurance, and without proof of good health, the Secretary is authorized to apply any national service life insurance dividend credits and deposits of such insured existing at the date of the insureds' application to purchase paid up insurance."

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THE SECRETARY OF
VETERANS AFFAIRS,
*Washington, DC, July 22, 1991.*

Hon. DAN QUAYLE,
*President of the Senate, Washington, DC.*

DEAR MR. PRESIDENT: There is transmitted herewith a draft bill "To amend title 38, United States Code, to permit the Secretary of Veterans Affairs to declare an open season during which veterans with participating National Service life Insurance policies can purchase paid-up, additional insurance with their dividend credits and deposits whenever the Secretary determines that it is administratively and actuarially sound for each program of insurance." It is requested that the bill be referred to the appropriate committee for prompt consideration and enactment.

This draft bill would amend 38 U.S.C. §707(c) to allow National Service Life Insurance (NSLI) policyholders with participating policies (policies which earn dividends) to purchase paid-up, additional insurance from time to time with accumulated dividend credits and deposits during "open seasons" declared by the Secretary. The "open seasons" would be specifically defined and declared in accordance with a determination that they are administratively and actuarially sound for each program of insurance involved.

Under the current provisions of 38 U.S.C. §707(c), a policyholder may purchase paid-up, additional insurance, but only with dividends that are "due and payable on national service life insurance after the date of such application of purchase paid up insurance." This prospective restriction also applies to policyholders who do not take their dividends in cash but choose one of the other dividend options that allows them to leave the money with the VA in a "dividend credit" or "dividend deposit" account which earns interest.

When the legislation creating the paid-up addition dividend option was enacted in 1972, it included a limited period (six months from the effective date of its passage) for NSLI policyholders to purchase paid-up, additional insurance with dividend credits and dividend deposits which has accumulated before the legislation was passed. Although the legislative history does not explain why this "open season" was restricted to six months, it was probably to prevent policyholders from purchasing paid-up additions in anticipation of death. An unrestricted open season without good health requirements could lead to antiselection, that is, a disproportionately high number of terminally ill individuals acquiring the extra coverage in anticipation of death. This, in turn, would have adverse effects on the reserves needed to fund the program.

Throughout the intervening years, we have received numerous inquiries from NSLI policyholders asking how they can increase the amount of their insurance coverage. Those policyholders who have policies that earn dividends are reminded of the paid-up addition dividend option as one way that they can increase their coverage. They are also informed that the amount of paid-up additional insurance they can obtain is limited to only that amount which can be purchased with dividends due and payable after the date of application for the paid-up additions.

Our insurance actuarial staff has reviewed the financial status of the NSLI programs and evaluated the impact on the programs if policyholders who have dividend accumulations were offered the opportunity from time to time to use them to purchase paid-up additions. The actuarial staff concluded that there would be no adverse impact on the NSLI programs as long as the "open seasons" to purchase additional insurance did not extend longer than one year.

There are approximately 350,000 policyholders who have accumulated dividend credits or deposits totaling over $800 million. Enactment of this proposal would offer our policyholders another option for use of these funds. They could choose to continue to have VA hold them and earn interest, or they could choose to use all or part to buy paid-up additions at attractive prices. Under the current purchase rates, these accumulated funds could purchase over $1.5 billion in paid-up insurance. In view of the strong financial position of the NSLI trust funds, the relatively good health of our NSLI policyholders, and the express desire of many of them to increase their NSLI coverage, we believe they should be given this option.

The only costs associated with this bill, if enacted, would be the administrative costs incurred in conducting the open seasons. The administrative cost of such an open season would currently be approximately $225,000. The increase in the amount of paid-up insurance coverage would not result in the need for any new budget authority or outlays.

We have been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this legislative proposal to the Congress.

Sincerely yours,

EDWARD J. DERWINSKI.●

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By Mr. SYMMS (for himself and Mr. D'AMATO):

S. 1617. A bill to amend the Internal Revenue Code of 1986 to provide protection for taxpayers, and for other purposes; to the Committee on Finance.

FAIRPLAY FOR TAXPAYERS ACT OF 1991

Mr. SYMMS. Mr. President, the American taxpayer is under attack from the U.S. tax system. There's just no other way to put it. As the Congress struggles each year to find better ways to raise taxes to pay for its spending increases, one of the places it's looked is improving the efficiency of the Internal Revenue System collection machine.

When the IRS gets better at chasing your dollars, look out.

It's a simple matter of politics; it's a lot easier politically to increase tax collections by forcing the IRS to be more aggressive than it is actually to increase a tax. It's easier to say you're going after deadbeats and tax cheaters than it is to say you're going after the last few dollars in a workingman's wallet. This is particularly true when underpayments—generally known as the tax gap—are estimated to be about $100 billion annually.

In recent history, in almost every year we've provided additional funding to the IRS just so we can wring an extra dollar out of the Internal Revenue Code. In the last 11 years, in the area of tax collections alone, we have increased funding by 175 percent, that's an 81 percent increase in inflation-adjusted dollars. And that additional funding has made possible an almost 60 percent increase in investigators, auditors, and collection agents.

I don't object so much to the additional moneys going to the Service because it is unfair when taxes are so high on everyone else for a few dishonest individuals to escape the tax man's reach. The real problem is that taxes are just too high. If they weren't so high we wouldn't be in a pinch to tighten the screws through the IRS, but that's another problem for another day.

As the pressure on the IRS grows year after year to collect every last dollar due to the Treasury, the incidents of taxpayers abuse by the Service grow as well. No matter how hard the people at the IRS work at it, it can't be helped. Taxpayers make mistakes. IRS agents make mistakes. Supervisors make mistakes. The folks typing the data into the computers make mistakes. And as the pressure grows, the number of mistakes grows and the damage that can be inflicted on taxpayers' businesses, on their lives, their liberties, their happiness grows as well.

Every Senator and Congressman is confronted on an almost daily basis with taxpayers claiming they have been treated unfairly or improperly by the IRS. Sometimes the taxpayer is just angry he had to pay the tax. With taxes so high, that's easy enough to understand.

Many times, the Service's position was correct, but the taxpayer had so much difficulty resolving the case that he's left with a strong and nagging

feeling he was mistreated by a Federal Government agency paid for by his own taxes.

Win, lose, or draw, taxpayers really get frustrated with the tremendous advantages the Service has, and the basic unfairness that exists in much of the basic structure of the dispute resolution process. And I should point out that all this frustration at the IRS tends to make taxpayers angry at election time and, if we as their elected representatives don't try to do something about it, we deserve to get thrown out of office.

Mr. President, I think it's important to state, and to remember when talking about taxpayer's rights and so forth, that the people at the IRS are hard-working, honest, and fair-minded. By pointing out flaws in the system, I don't mean to denigrate or criticize the vast majority of the employees at the Service.

I was encouraged, for example, when I read recently according to one report that over 90 percent of Service employees consider it unethical to deceive Congressional committees, Government auditing agencies, or the press just to protect the Service. And 90 percent of employees think it's unethical to fail to report instances where they see others flagrantly violating rules or doing improper acts. While we would all like to see that percentage go to 99 percent plus, as a practical matter 90 percent is pretty good. These numbers don't tell us there are no problems. They only tell us the situation hasn't gotten desperate, yet.

Part of the problem is that the IRS is not like a business. Other than a sense of fairplay, of respect for a citizens rights and circumstances, there's very little incentive for an IRS employee to treat taxpayers like customers and employers. There is no incentive to go the extra mile to make sure the taxpayer on the other end of the telephone understands what needs to be done or how the tax law works. The IRS won't go out of business if taxpayers don't like the service they get.

And when something goes wrong, the power of the IRS is so enormous that a handful of uncaring or overzealous individuals can make a taxpayer's life miserable and even destroy the taxpayer financially through no fault of his own.

Taxpayers rely on the Congress to protect them. We do this, in part, through case work. But the most important defenses are the rules and statutes we enact to balance the scales. The rights and defenses provided, however, are nowhere near sufficient either to discourage Service employees from acting improperly or to allow the taxpayer to recover his losses when the Service has acted improperly.

I wonder if my colleagues realize how dangerous this situation really is. Every year we're putting more pressure on Service personnel by increasing taxes, making the tax code more complicated or passing entirely new taxes. At the same time, we're pressuring the IRS to close the so-called tax gap, to wring more revenues out of the existing code.

As the pressure on the tax system grows, the likelihood of mistakes and abuse increase. An abusive tax collection service destroys the taxpayer's sense that he's being treated fairly. When taxpayers lose their faith that the system is fair, then our system of voluntary compliance will fall apart.

The problem extends beyond whether the IRS can function efficiently. If it were just a matter of failing to provide the Federal Treasury with revenues to spend, some of us might not find that such a bad thing. But as the machinery of the IRS begins to sputter, the Service becomes more and more abusive of taxpayers in its attempt to track down the money.

There is another aspect that we can not ignore. For many of our citizens, the process of collecting and paying taxes is the most immediate and personal contact they have with the Federal Government. When that process begins to fail, when it invites cheating and disrespect for the law, when it becomes something to be feared and hated, then it creates a strong sense of animosity toward government and it threatens society itself. That is, after all, how the United States began, through a tax revolt.

As all of these pressures mount, I believe it is vital for the Congress to find ways to ensure that taxpayers are treated fairly and honestly. Three years ago we passed the Taxpayer Bill of Rights. No one argued at the time that these important, yet modest, reforms would be the last word. Much more needs to be done to reestablish a balance between the Service and taxpayers. Americans need to know there is a sense of fairplay in the system.

To take the next step down this road, I am introducing legislation today with my colleague, Senator D'AMATO, that I call the "Fairplay for Taxpayers Act of 1991." This legislation builds on the foundation laid 3 years ago and adds a number of important elements putting the taxpayer on a more level playing field with Service agents, increasing the taxpayer's ability to protect himself when he feels he may have been wronged, and increasing congressional and public understanding of the forces at work within the Service.

I have provided a more complete description of the bill at the end of my remarks. But I would like to highlight a few of its provisions. For example, the bill establishes a tax preparer privilege. Prior to working on this bill I thought that a client's communications with his tax preparer are confidential and protected. As it turns out, there is no protection under current law for these communications when they involve either accountants or enrolled agents. There isn't even a privilege if the communication is between a lawyer and client if the communication deals solely with tax-related matters.

This is one time when we really need to level the playing field. When a citizen is in a dispute with the IRS, often the resolution of the dispute will hang on an interpretation of the law. Despite its 17 volumes, the Internal Revenue Code is not black and white. Questions of interpretation, meaning, and intent arise every day. To understand how best to proceed, a client and a tax preparer need to be able to discuss the case fully and openly, including drafting notes, letters, and working papers.

As it now stands, the IRS can demand those notes and working papers to try to outguess the taxpayer. This is grossly unfair. Every taxpayer who is in a dispute between himself and the IRS should have the right to counsel without the Service looking over this shoulder, spying on every written word.

Not surprisingly, the lack of protection from spying eyes has a chilling effect on the tax preparer's work product. This often slows the resolution of the dispute and likely leads to a less accurate result. Most important of all, it means taxpayers don't always get the full benefit of counsel.

It wouldn't be so bad if the taxpayer could demand the same types of documents from the IRS agent handling the case, but, of course, that isn't the case. These requests only go one way. Taxpayers never get to see the various notes, strategies, and such perpared by the IRS agent.

This bill puts taxpayers on a more equal footing with the IRS by making the communications between tax preparers—tax lawyers, accountants, and enrolled agents—privileged, meaning the Service cannot demand the notes and other communications that arise during the course of the dispute. This privilege operates exactly like the privilege currently available between client and legal counsel in non-tax disputes, with the same limitations. For example, there is no privilege if the taxpayer communicates an intent to commit an illegal act and a taxpayer cannot protect a document from discovery just by handing that document over to his counsel.

Another important change made through the bill deals with the awarding of costs and fees. Under current law, a taxpayer can sue the IRS to recover the costs incurred in a defense. To do so, however, the taxpayer must first win the case and then he must make a claim to recover his costs. In order to recover his costs, however, the position taken by the IRS must have been way off the mark, or, as the Code puts it: not "substantially justified."

And if the IRS disagrees with the amount claimed, or, more likely, disagrees that it was badly in error, then the taxpayer must go to court again and prove the extent of the Service's error.

The IRS already has a wide range of advantages in a tax dispute. First, the rules are written so that the taxpayer is responding to the Service. Second, the burden of proof generally lies with the taxpayer. And third, the Service has in-house lawyers and accountants to work on the case. There is no personal costs to an agent to pursue a taxpayer. He faces no financial burdens. The taxpayer, on the other hand, must endure a potentially expensive and personally stressful process.

We need to understand what these defense costs really mean to the taxpayer. Consider that the taxpayer must first show that the IRS was incorrect with regard to the amount of tax, interest, or penalty claimed. If the taxpayer prevails, then the defense costs incurred represent an additional tax or, more accurately, a tax penalty incurred because the IRS made a mistake. There is no reason a taxpayer should have to pay an additional penalty when the IRS makes a mistake. That is why I believe the taxpayer should be able to recover his costs to the extent the taxpayer prevails in a tax dispute.

Under the bill, we replace the substantially justified test with something much simpler—the taxpayer can recover the same percentage of his costs as the percentage by which he prevailed. For example, if the Service claimed an additional $1,000 in back taxes, and if the taxpayer is finally determined to owe $600, then the taxpayer has prevailed with respect to $400, or 40 percent of the claimed amount. If the taxpayer incurred $200 in cost, then he would now be able to recover 40 percent of $200, or $80 in costs.

Another section of the bill addresses the question of IRS employee conduct. The bill expands the definition in the IRS Rules of Conduct manual with respect to the conduct which must be reported to the IRS Inspection Service. Employees would be required to report behavior such as harassment of taxpayers, harassment of fellow employees, and preferential treatment.

The study of employee attitudes at the IRS makes clear that Service personnel believe improper or unethical behavior ought to be reported to the proper authorities, in this case the Inspection Service. What they lack is a clear and comprehensive description of what constitutes such improper behavior. This bill seeks to remedy that shortcoming by instructing the Service to amend its Rules of Conduct manual.

Every Federal agency has problems and weaknesses. It is Congress' responsibility, working with the administration, to isolate and correct these weaknesses. The Congress has been badly handicapped in carrying out oversight of the IRS by the intense secrecy that surrounds the Service's activities. In some respects, this secrecy is essential to the proper functioning of a tax collection agency. But, in my opinion, the Service has been allowed to exercise a degree of secrecy far beyond what is necessary.

It's a fact that you can't fix it if you don't know what's broke. So in an attempt to give the Commissioner of the IRS and the administration a better understanding of employee behavior within the IRS, the bill requires the Commissioner to report to the Inspector General of the Treasury on a quarterly basis on the types and number of cases of employee misconduct reported to the Inspection Service. These reports will include such information as the region of the country of the employee alleged to have acted improperly, the nature of the alleged misconduct, the extent of the investigation by the Inspection Service, and, where misconduct is found to have occurred, measures taken by the Service to prevent such misconduct from recurring.

Finally, to give the Congress and the public better information on where there may be problems, the bill requires the Inspector General of the Treasury to submit to the Congress an annual summary of the quarterly reports that were submitted to it during the prior year. These annual reports shall include information similar to that provided to the Inspection Service by the Commissioner. These annual reports, like the quarterly reports submitted to the Inspection Service, will be drafted in such a way as to ensure the privacy of taxpayers and employees of the IRS.

The purpose of requiring these reports is not to impugn the character or dedication of IRS employees. But, as I said, no agency is perfect. And, because of the excessive secrecy of the IRS and its extraordinary power over our citizens' lives, I believe the Internal Revenue Service needs to be more open to citizens' concerns and respectful of citizens' rights than just about any other Federal agency. To ensure that this is the case, the Congress needs more and better information on what problems exist in order to perform its job as overseer.

Mr. President, even if this bill were to pass into law as introduced, there would still be problems left to address in the operation of the IRS. It would still be far too secretive. It would still need additional resources to better manage information internally. It would still need what I believe to be very serious management reforms. But this bill is a good and necessary next step to follow on the accomplishments of 3 years ago. I hope my colleagues will take a moment to consider it in the light of the constituent cases that cross their desk. And, having done so, I hope my colleagues will join me in providing more fairplay for taxpayers in 1991.

I ask unanimous consent that the accompanying section-by-section analysis of the bill be printed in the RECORD together with the text of the bill.

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

S. 1617

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; AMENDMENT OF THE 1986 CODE.**

(a) SHORT TITLE.—This Act may be cited as the "Fairplay for Taxpayers Act of 1991."

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

**SEC. 2. COMMUNICATIONS BETWEEN TAXPAYER AND TAX RETURN PREPARER.**

(a) IN GENERAL.—Rule 501 of the Federal Rules of Evidence is amended by—

(1) inserting "(a)" before "Except";

(2) inserting after "Except as" the following: "provided in subsection (b) and as"; and

(3) adding at the end thereof the following:

"(b) The communications between a lawyer, an accountant, or an enrolled agent with respect to the preparation of a tax return for a client and the client shall be privileged in the courts of the United States."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to communications after the date of the enactment of this Act.

**SECTION 3. RATE OF INTEREST TO BE SAME FOR UNDERPAYMENTS AND OVERPAYMENTS OF TAX.**

(a) IN GENERAL.—Subparagraph (B) of section 6621(a)(1)(B)(defining overpayment rate) is amended by striking "2 percentage points" and inserting "3 percentage points".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies for purposes of determining interest allocable to periods after December 31, 1991.

**SECTION 4. FAIR ACCURAL OF INTEREST.**

(a) IN GENERAL.—Paragraphs (2)(A) and (3) of section 6601(e) (relating to rules for computing interest) are each amended by striking "10 days" and inserting "45 days".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any notice and demand given after December 31, 1991.

**SECTION 5. RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS AND RULINGS.**

(a) IN GENERAL.—Subsection (b) of section 7805 (relating to rules and regulations) is amended to read as follows:

"(b) RETROACTIVITY OF RULES AND REGULATIONS.—

"(1) IN GENERAL.—Any final, temporary, or proposed regulation or ruling issued by the Secretary shall apply prospectively from the date of publication of such regulation or ruling in the Federal Register.

"(2) CONGRESSIONAL AUTHORIZATION.—The prospective-only treatment of paragraph (1) may be superseded by a specific legislative

grant from Congress authorizing the Secretary to prescribe the effective date with respect to a statutory provision."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any regulation published after the date of the enactment of this Act.

**SECTION 6. AWARDING OF COSTS AND CERTAIN FEES IN TAX CASES.**

(a) REPEAL OF SUBSTANTIAL JUSTIFICATION TEST.—

(1) IN GENERAL.—Section 7430(c)(4)(A) (defining prevailing party) is amended by

(A) replacing "substantially prevailed" with "prevailed to some extent" in clauses (ii) and (iii);

(B) striking clause (i) and by redesignating clauses (ii) and (iii) as causes (i) and (ii), respectively.

(2) CONFORMING AMENDMENT.—Section 7430(c) is amended by striking paragraph (7).

(b) PRO RATA ALLOCATION OF COSTS.—Section 7430(c)(4) is amended by adding at the end thereof the following new subparagraph:

"(C) PRO RATA ALLOCATION.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), a party shall be treated as the prevailing party at least with respect to the applicable percentage of reasonable litigation and administrative costs.

"(ii) applicable percentage.—For purposes of clause (i), the applicable percentage is the percentage determined by dividing—

"(I) the amount of any tax, interest, penalties, or additions to tax the Service initially claimed the taxpayer was required to pay with respect to the issues in the proceeding less the amount the taxpayer is required to pay, by

"(II) the amount the Internal Revenue Service initially claimed the taxpayer was so required to pay."

(c) REVISING TEST FOR RECOVERY OF REASONABLE ADMINISTRATIVE COSTS.—Section 7430(c)(2) (relating to reasonable administrative costs) is amended by striking the last paragraph of the subsection and replacing it with:

"Such term shall only include costs incurred during, or in preparation for, (i) the initial audit, or (ii) an appeals conference, or at any time thereafter."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any proceeding commenced after December 31, 1991.

**SEC. 7. CIVIL DAMAGES FOR CERTAIN ACTIONS OF INTERNAL REVENUE SERVICE.**

(a) SECTION TO APPLY TO CARELESS ACTIONS.—Section 7433(a) is amended by inserting "carelessly," after "recklessly".

(b) DAMAGES AVAILABLE WITH RESPECT TO DETERMINATION OF TAX.—

(1) IN GENERAL.—Section 7433(a) is amended by inserting "determination or" before "collection".

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 7433 is amended by inserting "DETERMINATION OR" before "COLLECTION".

(B) The item relating to section 7433 in the table of sections for subchapter B of chapter 76 is amended by inserting "determination or" before "collection".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions taken by employees of the Internal Revenue Service after December 31, 1991.

**SEC. 8. INTERNAL REVENUE SERVICE EMPLOYEE CONDUCT REPORTING.**

(a) FINDINGS.—The Congress hereby finds that—

(1) The Internal Revenue Service has many fine and upstanding employees who carry out their duties appropriately and admirably;

(2) ethics and integrity in government are of vital concern to the Congress and to the public;

(3) ethics and integrity are especially important with respect to the Service because its broad powers to enforce the tax laws gives its employees exceptional authority over the liberty of taxpayers;

(4) the IRS Code of Conduct manual is unclear with respect to the types of unethical behavior that must be reported;

(5) Service employees need a clear statement of the types of behavior needed to maintain a high level of integrity and ethical behavior within the Service;

(6) the system of voluntary compliance with the tax laws will only function so long as taxpayers believe they receive fair and evenhanded treatment by these laws and by the Service charged with its administration;

(7) there is a great need for public awareness of and protection against even isolated cases of misconduct;

(8) despite the high quality of Service employees, some cases of employee misconduct have occurred and the problem of misconduct within the Service, especially with regard to abuses in investigations of taxpayers, has been the subject of a report by the Commissioner's Review Panel on IRS Integrity Controls;

(9) the Commissioner's Review Panel found that "little demonstrable progress is evident" with regard to ethics initiatives within the Service;

(10) there is, therefore, a great need to improve the oversight of the conduct of Service employees;

(11) the Congress has insufficient information to perform its oversight role of the Internal Revenue Service on behalf of the public; and

(12) the Inspector General of the Department of the Treasury is directly involved in investigations of certain employee actions, placing him in an oversight capacity with responsibility to Congress.

(b) PURPOSE.—It is the purpose of this subsection to improve the ability of the Service to monitor and to discourage misconduct by Service employees, to improve oversight by the Congress of employee misconduct in the Service, and to provide education and training for employees regarding their conduct.

(c) IRS EMPLOYEE REPORTING OF MISCONDUCT.—The Service shall require employees to report to the Inspection Service all instances of misconduct as defined under subsection (h)(1).

(d) SUBMISSION OF QUARTERLY REPORTS.—The Commissioner shall report quarterly to the Inspector General concerning cases reported to the Inspection Service of misconduct by Service employees. Such quarterly reports shall include detailed and specific information such as, but not limited to,

(1) the region and branch of an employee alleged to have acted inappropriately;

(2) the precise nature of alleged misconduct reported;

(3) the extent to which alleged misconduct was investigated;

(4) any determinations or dispositions of such investigated cases; and

(5) measures taken by the Service to prevent such abuses from occurring in the future.

(e) PREPARATION AND SUBMISSION OF ANNUAL SUMMARIES.—

(1) The Inspector General shall submit to the Congress an annual summary of the quarterly reports submitted during the prior year by the Commissioner as required under subsection (d), or reported directly to the Office of Inspector General. This summary report shall be submitted by March 1 of each year to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(2) Each summary report shall contain the type of information required to be submitted by the Commissioner to the Inspector General pursuant to subsection (d). In addition to such information, the Inspector General shall include in the summary other information available to him which is relevant and appropriate to such a summary report.

(3) Summary reports required to be submitted pursuant to this subsection shall also include, but not be limited to—

(A) summaries of reports and complaints alleging acts of misconduct as defined in this Act;

(B) statistical summaries of the number of complaints and reports alleging acts of misconduct, of investigations of such complaints and reports, and of the dispositions of such investigations;

(C) analyses and descriptions of the types of acts of misconduct reported and the region and branch of the individual who is alleged to have acted inappropriately;

(D) analyses and explanations of decisions not to investigate alleged misconduct as well as descriptions of corrective actions taken by the Service with regard to employees who are found to have acted inappropriately; and

(E) analyses by the Inspector General regarding trends concerning integrity and ethics among IRS employees.

(4) The summaries prepared by the Inspector General shall be public documents and shall be made available in the IRS public reading room to all members of the public.

(f) PRIVACY.—Nothing in this section shall be construed to permit the publication of the names or similar identifying information of any taxpayer or of any employee of the Service. The annual summary described in subsection (e) will be drafted in such a way as to protect the privacy of taxpayers and employees of the Service while satisfying the full intent of this section. Publication of the annual summary pursuant to this section is deemed not to be contrary to the legitimate privacy interests of taxpayers and Service employees.

(g) EDUCATION AND TRAINING.—The Commissioner shall carry out an education and training program for all Service employees regarding appropriate and ethical conduct of governmental duties and responsibilities, including explanation of applicable standards of conduct.

(h) DEFINITIONS.—For purposes of this subsection—

(1) the term "misconduct" shall include, in addition to matters which may be criminal in nature, misfeasance such as harassment of taxpayers, harassment of fellow employees, conflict of interest, preferential treatment, improper associations, computer misuse, or other instances of serious misfeasance.

(2) the terms "Service" or "IRS" refer to the Internal Revenue Service of the Department of the Treasury.

(3) the term "Commissioner" means the Commissioner of the Internal Revenue Service.

(4) the term "Inspector General" means the Inspector General of the Department of the Treasury and the term "Office of the Inspector General" means the Office of the Inspector General of the Department of the Treasury.

(5) the term "employee" includes any officer or employee of the Service.

(6) the term "Inspection Service" means the Inspection Service of the Internal Reve-

nue Service of the Department of the Treasury.

(i) AMENDMENTS TO THE INTERNAL REVENUE CODE.—Section 6103(f) of the Code (relating to disclosure to Committees of Congress) is amended by adding the following new subsection at the end thereof:

"(5) SUMMARY REPORTS.—Pursuant to Section 8 of the *Fairplay for Taxpayers Act of 1991*, annual summary reports submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives shall include return information but shall not include the name or similar identifying information of any taxpayer or of any officer or employee of the Service. Such reports may be used and referred to by such Committees publicly or in open Committee session."

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the Inspector General to carry out his duties under this Act.

SECTION-BY-SECTION ANALYSIS OF BILL

SECTION 1. SHORT TITLE: FAIRPLAY FOR TAXPAYERS ACT OF 1991

SECTION 2. ESTABLISHING A TAX PREPARER PRIVILEGE

*Proposed Change:* The bill extends an evidentiary privilege to attorneys, accountants, and enrolled agents engaged in tax matters. These tax preparers would benefit from the same client privilege as is currently enjoyed by attorneys doing non-tax work.

*Current law:*

The attorney-client privilege protects certain communications from disclosure, including letters, notes, and working papers. The privilege gives the client the opportunity for the full benefit of counsel, which can only be gained if the client believes he may freely and openly discuss his case with his attorney.

The privilege does not protect communications which are part of a conspiracy to commit illegal acts. Nor can a person protect documents from disclosure by giving them to his attorney.

The attorney-client privilege does not extend to purely tax matters. If a communication is exclusively tax related, then it is not protected under the privilege.

There is no privilege for other tax preparers such as accountants and enrolled agents.

*Reasons for Change:*

The purpose of the attorney-client privilege is to encourage a free and open dialogue between the parties. Such open communication is essential for the client to receive the most accurate and useful information possible. This rationale extends with equal force to communications between taxpayer and tax preparer.

Whereas the IRS can demand these communications from the taxpayer or his attorney, the taxpayer has no right to demand the working papers of the IRS agent. This is one-sided and blatantly unfair to the taxpayer.

More open and complete communication will also improve the quality of tax preparation, resulting in more accurate tax filings and easier administration of the tax laws by the IRS.

SECTION 3. EQUALIZATION OF INTEREST RATES

*Proposed Change:* The bill equalizes the interest rate charged by the government and that demanded by the government at 3 percentage points over the base rate.

*Current Law:*

When the taxpayer owes the government back taxes or penalties, he incurs interest at the rate of 3 percentage points over a base interest rate which is related to the rate charged on Treasury bills. When the government owes the taxpayer money, it incurs interest at 2 percentage points over the base rate.

*Reasons for Change:*

It is unfair for the government to charge a higher interest rate than it is willing to pay. Unfairness such as this erodes public support for and compliance with the tax system.

SECTION 4. FAIR ACCRUAL OF INTEREST

*Proposed Change:* The bill would establish that if the taxpayer pays the full amount of taxes, interest, and penalties owed within 45 days from the date of notice and demand, then no interest liability accrues to the taxpayer.

*Current Law:*

Interest accrues on back taxes if the amount is not paid within 10 days from the date of notice and demand. However, if the government owes the taxpayer a refund, interest accrues if not paid within 30 days from the date of overpayment. Moreover, no interest is due if the government actually cuts a check within 45 days of the date of overpayment.

*Reasons for Change:*

The current system is unfair because it requires the taxpayer to make a payment much more rapidly than the government. Moreover, many taxpayers need time to organize their financial affairs in order to make payment. If the government needs a 45 day window, the taxpayer should be afforded at least as much time as the government.

SECTION 5. RELIEF FROM RETROACTIVE TAXATION

*Proposed Change:* All final, temporary, or proposed regulations and rulings would apply prospectively from the date of publication. This prospective-only treatment would apply in all cases unless the Congress specifically waives this requirement.

*Current Law:*

When the Congress changes the tax laws and the Treasury Department responds with new or revised regulations, those regulations apply retroactively to the date of enactment of the new law, even though the taxpayer may have been unaware of the change until the publication of the regulations, or may have been unable to comply with the new law pending the publication of the regulations.

*Reasons for Change:*

Retroactive taxation is unfair and damaging to a system of voluntary compliance because taxpayers believe the system to be capricious.

SECTION 6. AWARDING OF COSTS AND FEES IN TAX CASES

*Proposed Changes*

(1) The bill replaces the "substantially justified" test for determining whether the taxpayer may recover costs and fees incurred as part of an administrative or court proceeding. Under the bill, if the taxpayer prevails to some extent in the controversy, then he may recover the same percentage of costs incurred as the percentage by which he prevails in the controversy.

Thus, for example, if the IRS initially claims $1,000 in back taxes, and if the taxpayer is finally determined to owe $600, then then taxpayer has prevailed with respect to $400, or 40% of the claimed amount. Under the bill, if the taxpayer incurred $200 in costs, then the taxpayer could recover 40% of $200, or $80 in costs.

(2) The bill also changes the point in the process at which administrative costs incurred may be recoverable to the earlier of the initial audit or the date of the appeals conference.

*Current Law:*

(1) To recover costs incurred in an administrative or court proceeding with the IRS, the taxpayer must first show the IRS position was incorrect and then the taxpayer must show the position taken by the IRS was not "substantially justified", which may involve taking the IRS to court a second time.

(2) The costs which may be recovered are well-defined in the Code, and are divided between those which are incurred as part of litigation and those which are incurred as part of administrative action.

The Code specifies that only those administrative costs which are incurred after the earlier of (i) the date of receipt by the taxpayer of the Appeals Office decision, or (ii) the date of notice of deficiency.

*Reasons for Change:*

(1) The "not substantially justified" test is, in practice, a very high standard to meet. In a great many cases, therefore, the taxpayer is unable to recover even when the position taken by the Service was proven to be incorrect. The taxpayer is subject to additional tax whether he is right or wrong because even if the taxpayer prevails in the underlying case, the cost of establishing a defense is, in effect, another tax.

(2) Much of the costs incurred by the taxpayer in an administrative action are incurred long before a notice of deficiency or Appeals Office decision is received. Therefore, most of the costs incurred by the taxpayer may be ineligible for recovery. The purpose of the recovery statute is to hold the taxpayer harmless to the extent he prevails with respect to a contested amount. The current tests for when a taxpayer may recover administrative costs prevents this result.

SECTION 7. CIVIL DAMAGES FOR CERTAIN ACTIONS OF INTERNAL REVENUE SERVICE

*Proposed Change:* The bill expands the rights of taxpayers to sue the United States for civil damages when the IRS causes the taxpayer to suffer financial harm. First, the bill would allow the taxpayer to sue if an IRS agent was careless. Second, the bill would allow the taxpayer to sue if the mistake by the IRS occurred in the determination of tax liability as well as the collection of the tax.

*Current Law:*

Under current law, taxpayers are allowed to sue the United States in District Court for civil damages but only if an IRS employee recklessly disregards procedures or law in connection with the collection of tax.

*Reasons for Change:*

In order to recover damages, the taxpayer must show the behavior of the Service was in reckless disregard of law or procedure. This is a very high standard to meet. The standard proposed in the bill is that of carelessness, which is a much lower standard than recklessness. This lower threshold is appropriate because a taxpayer who suffers financial harm because the IRS has erred does not care whether the agent was reckless or merely careless. In either case, the taxpayer should be made whole.

All cases can be thought of as proceeding from the determination stage, where the amount of tax, penalties, and interest is determined, to the collection stage, where the IRS attempts to collect the amount of tax established in the determination stage.

The tools available to the Service for collecting tax lend themselves to great financial harm if misused. But a taxpayer can suffer, as well, if IRS personnel are careless about determining tax liability because the

result may be the taxpayer must spend years and thousands of dollars trying to straighten the matter out. This is time and money taken from the taxpayer's other economic activities.

SECTION 8. INTERNAL REVENUE SERVICE EMPLOYEE CONDUCT REPORTING

*Proposed Changes:*

1) The bill expands the definition in the IRS Rules of Conduct manual with respect to the conduct which must be reported by employees to the IRS Inspection Service. Employees would hereafter be required to report misfeasance such as harassment of taxpayers, harassment of fellow employees, conflict of interest, preferential treatment, improper associations, and computer misuse.

2) The bill requires the Commissioner of the IRS to submit detailed quarterly reports to the Inspector General of the Treasury Department concerning cases reported to the Inspection Service. These quarterly reports will include the region and branch of the employee alleged to have acted inappropriately, the precise nature of the alleged misconduct, the extent to which the misconduct was investigated, any determinations or dispositions of such investigated cases, and measures taken by the Service to prevent such abuses from occuring in the future.

3) The bill requires the Inspector General of the Department of the Treasury to submit to the Congress an annual summary of the quarterly reports submitted during the prior year by the Commissioner of the IRS. This report shall be submitted to the Finance Committee and the Committee on Ways and Means no later than March 1 of each year.

These annual reports shall include summaries of the reports received by the Commissioner as well as statistical summaries of the number of complaints and reports alleging acts of misconduct, of the investigations of such complaints and reports, and of the dispositions of such investigations, as well as analyses by the Inspector General regarding trends in integrity and ethics among IRS employees.

These reports will be written in such a way as to ensure the privacy of taxpayers and employees and officers of the IRS. No identifying information will be included in either the quarterly nor the annual reports.

4) The Commissioner is instructed to carry out an education and training program for all Service officers and employees regarding appropriate and ethical conduct of governmental duties and responsibilities, including explanation of applicable standards of conduct.

*Current Law:*

The current IRS Rules of Conduct manual states that employees are only required to report to the IRS Inspection Service misconduct by other employees that is criminal in nature or otherwise unethical. However, the distinction between what types of unethical behavior must and what need not be reported is unstated. For example, this listing does not include harassment of taxpayers or other employees.

A Review Panel on IRS Integrity Controls, appointed by the Commissioner of the Internal Revenue Service, found that "little demonstrable progress is evident" with regard to ethics initiatives within the Service.

*Reasons for Change:*

For their own protection employees at the IRS need a clear statement of correct ethical behavior. The current manual fails to provide that statement by ignoring many aspects of employee behavior which must be considered to be unethical.

The Commissioner of the IRS has limited abilities from his national office to monitor the progress of the various regions and branches in the Service in their attempt to improve the standards of integrity and ethics of Service employees. To assist the Commissioner in this important task, the bill requires him or her to report on a regular basis the progress being made at the local levels.

As has been shown in other agencies, public and congressional oversight are effective guarantors of the rights of individuals against government bureaucracies. The only way to make such oversight possible is to make sufficient information available. Therefore, the bill requires the Inspector General to submit an annual report summarizing the quarterly reports received from the Commissioner to assure the public of steady progress, or to alert the public if problems are developing with regard to IRS integrity controls, and to apprise the Congress of developments within the IRS regarding ethical behavour.

Mr. D'AMATO. Mr. President, I rise as an original cosponsor of the Fairplay For Taxpayers Act of 1991, introduced today by my distinguished colleague from Idaho, Senator SYMMS. We believe this legislation is a step forward in continuing to protect the taxpayer from unfair treatment by the IRS.

Three years ago, I cosponsored the omnibus taxpayers' bill of rights which was passed into law in November 1988 as part of the Technical and Miscellaneous Revenue Act of 1988. This legislation was intended to bring about improvements in the relationship between the Internal Revenue Service and the American taxpayer. Despite some new protection provided by passage of the 1988 legislation, it is apparent that further action is now necessary. The Fairplay For Taxpayers Act of 1991 will continue to level the playing field between the IRS and the taxpayer.

Mr. President, headaches caused by our dealings with the IRS will never be totally eliminated. Let's face it, the process of preparing and paying taxes is no fun. The process is filled with tension and aggravation for hundreds of thousands of taxpayers. Every year my office gets hundreds of IRS-related letters from constituents. They are not easy cases. Each one has its own horror story but one thing that comes across overwhelmingly in these letters is the feeling of wanton disregard of the taxpayer by individual IRS employees.

Let me share with you some of the words of my constituents who have experienced extreme frustration and close encounters of the third kind while dealing with the IRS:

* * *"these (IRS) individuals seem to be under the impression that they are above the law, can make up any rule whenever it pleases them, that our sole purpose in life, is to do as they command or suffer whatever consequences they (in their judge-jury-executioner disguise) decide on and pray. * * *"

* * *"why does it always have to take a tragedy to get some justice. * * *I thought this was the United States not some Communist country where a government agency has the right to abuse a citizen in this manner * * * you can't imagine the feelings of anguish, torment and helplessness I have * * *"

Mr. President, I believe that most IRS employees are good and dedicated folks. But one thing our bill does is attempt to address the handful that do abuse the American public.

The Fairplay For Taxpayers Act of 1991 expands the internal management control system at the IRS to increase the protection for the taxpayer from abuse by the IRS employee. This bill expands the definition of unethical behavior that must be reported by employees to include: Harassment of taxpayers, harassment of fellow employees, conflict of interest, preferential treatment, improper associations, and computer misuse. The Commissioner of the IRS is required to provide education and training for all officers and employees regarding appropriate and ethical conduct.

This is a step in the right direction that will serve not only the American taxpayer but will serve to protect those IRS employees who are hard working and committed to serving the public.

This legislation also makes a number of other improvements that remove barriers and correct inequities that burden the taxpayer. The Fairplay For Taxpayers Act of 1991:

Allows the taxpayer to recover costs and fees to the same extent that the taxpayer prevails in an administrative or court proceeding initiated by the IRS. If a taxpayer is found to only owe $500 in back taxes and the IRS said he owed $1,000, then the taxpayer has prevailed with respect to 50 percent of the IRS claim. Therefore, the taxpayer can recover 50 percent of whatever costs and fees he entailed as part of the proceeding. Currently, to recover costs, a taxpayer carries the burden of proving the IRS was substantially justified in its actions. This often entails extensive time and costs itself. It may even involve taking the IRS to court.

Eliminates a double standard set by the IRS on the interest paid on back taxes. Currently, the IRS charges the taxpayer 3 percent interest over base rate on back taxes but only pays 2 percent over base on overpayment owed to the taxpayer. This bill increases the interest rate paid to the taxpayer from 2 to 3 percent when the IRS owes the taxpayer a refund.

Eliminates a double standard set by the IRS on the timeframe allowed for payment of back taxes before interest begins to accrue. Currently, the IRS charges interest to the taxpayer on back taxes if not paid within 10 days but gives itself 45 days before paying interest if it owes money to the taxpayer. This legislation increases from 10 to 45 days the timeframe for a taxpayer to make a payment of back taxes before interest begins to accrue.

Extends the attorney-client privilege to attorneys, accountants, and enrolled agents.

Restricts the IRS from retroactively imposing regulations except where Congress waives the requirement.

Expands taxpayer rights to sue the United States for civil damages when the IRS causes the taxpayer to suffer financial harm.

Mr. President, once again, I commend my colleague, Senator SYMMS, for his attention to fairness. The Fairplay For Taxpayer Act of 1991 gives the average working- and middle-class taxpayer an even break. Americans already feel nickel and dimed by taxes at all levels of Government. They deserve better than to be bled by the process. This legislation makes great strides in providing fairness to all Americans. I look forward to many of our colleagues joining us in this effort.

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By Mr. NICKLES:

S. 1618. A bill to permit the Mountain Park Master Conservancy District in Oklahoma to make a payment to satisfy certain obligations to the United States, and for other purposes; to the Committee on Energy and Natural Resources.

PAYMENT BY MOUNTAIN PARK CONSERVANCY DISTRICT

• Mr. NICKLES. Mr. President, today I am introducing legislation which would authorize the Bureau of Reclamation to accept early repayment on the Tom Steed Reservoir from the Mountain Park Master Conservancy District in Oklahoma. I am pleased to say that my Oklahoma colleague, Senator BOREN, is joining me in introducing this legislation on behalf of the city of Frederick, OK, to allow them to repay their obligation to the Federal Government at a level equal to the present value of the debt. This action is necessary to prevent a possible default by the city on their obligation.

Mr. President, the Mountain Park Master Conservancy District was formed by the cities of Altus, Frederick, and Snyder in the early 1970's. The district contracted with the Bureau of Reclamation for construction of the Tom Steed Reservoir in response to projections that the city of Frederick would have a population of 20,000 by 1990 and that additional water supply would be needed. The city's population was 6,132 in 1970, 6,153 in 1980, and was estimated to be 5,500 in 1990. Thus, in the early 1980's it became clear that unless Oklahoma's economy changed drastically, the city of Frederick was going to have difficulty making annual payments exceeding $900,000 by the year 2000, an amount which is more than the entire general fund budget for the city. In early 1989, Frederick appointed an advisory committee to study recommendations for servicing the Tom Steed debt. This advisory committee recommended early repayment.

Mr. President, the original contract between the Bureau and the Mountain Park Master Conservancy District called for a 50-year payment plan, the first 10 years deferred, with total cost to the city of Frederick of $33,410,619. The legislation I seek would authorize the Bureau to accept a payment of $7,409,239 from the District. This payment represents the present value of the debt service due to the United States and was computed by discounting the debt service at the U.S. Treasury bond rate.

Mr. President, the city of Frederick is not seeking a sweetheart deal. They are simply acting in a responsible manner to try and solve this financial problem while protecting the interest of the Federal Government and their citizens. It is unlikley that the city will be able to service the Tom Steed debt under the current contract. However, if we allow this early repayment to occur, the city of Frederick can save a substantial amount of money by financing the project themselves. The Federal Government can benefit by receiving immediate payment on a long-term receivable, Mr. President, and the city of Frederick is preserved from significant financial hardship.•

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By Mr. MCCAIN:

S. 1619. A bill to amend the National Energy Conservation Policy Act to establish a water conservation requirement for Federal buildings, and for other purposes; to the Committee on Environment and Public Works.

WATER CONSERVATION ACT

Mr. MCCAIN. Mr. President, I rise today to offer legislation which will ensure that the Federal Government does its part to conserve our Nation's precious water supplies.

Specifically, the bill calls on Federal agencies to take water conservation measures with payback periods of less than 10 years. As a practical matter, that mandate means the replacement of inefficient plumbing equipment and fixtures within Federal buildings and agencies, when such replacements will pay for themselves within 10 years through lower water, power, and other costs.

In addition, the legislation would require Federal agencies to install the most water efficient fixtures available when new Federal facilities are built or old equipment is replaced for any reason.

Life depends on water, Mr. President. In Arizona, where water is a scarce commodity, the quality of life depends on how wisely we manage this precious and limited resource.

Across the Nation, and particularly in the arid regions of America, swelling demand for dwindling supply is pitting water interests against each other in a competition of growing intensity and acrimony: municipal and industrial water users versus agriculture; rural areas against urban centers; Indians versus non-Indians; and consumptive use versus recreation, fish, and wildlife.

The result is a vigorous and divisive competition among interests that are each vital to the well-being of our Nation. Public policy makers on the State and local levels will continue to grapple with many difficult issues concerning how water resources should be allocated.

While we focus on controversial and costly public works to extend the limits of our water supply, we are overlooking a vast and untapped source of water—a wellspring that will save us money, spare the environment, and contribute significantly to meeting the demands of our growing population.

Where might we find this untapped wellspring? In my State of Arizona, and other areas throughout the country, it can't be found in overdrawn aquifers or overappropriated streams or the modification of weather. We can find it in our workplaces and in our own homes, a wellspring known as plumbing efficiency.

Studies show that by using more water efficient plumbing fixtures, including dishwashers, clothes washers, shower heads and toilets, we can use 20 percent less water to do the same work without impairing performance. Less water to do the same job.

By taking cost-effective and reasonable steps to use water more efficiently, not only do we save a vital resource and the associated costs, but by creating less wastewater, there will be less sewage to treat, thereby conserving energy, landfill capacity and tax dollars, and reducing environmental risks.

Before we look for new ways to wring more water from the environment, we have an obligation to ensure that the water we have already developed is used as efficiently and effectively as possible.

The Federal Government has a responsibility to lead that effort and to set an example for all sectors of society. I ask that a letter in support of the legislation from Governor Symington of Arizona be printed in the RECORD.

I hope this bill will receive a timely hearing and expeditious action by the Senate.

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

OFFICE OF THE GOVERNOR,
*Phoenix, AZ, July 30, 1991.*

Hon. JOHN MCCAIN,
*U.S. Senator, Washington, DC.*

DEAR SENATOR MCCAIN: I commend and endorse your efforts in amending the Water Conservation Act of 1991 to establsh water conservation requirements for federal buildings. It is important for the federal government to set an example by adopting measures that show a commitment to prudent and efficient water use. Research by the Ari-

zona Department of Water Resources has shown a wide array of highly effective water conservation measures with payback periods of less than ten years. The water we save today is the cheapest "new" suppy for future growth.

In Arizona, cities, private water companies, industry, and agriculture in the Active Management Areas—Phoenix, Tucson, Prescott and Pinal—are required to implement water conservation measures through regulations issued by the Arizona Department of Water Resources. Additionally, the state requires all construction contracts awarded and state facilities constructed after January 1, 1991, to provide for the installation of ultra-low flow plumbing fixtures and the most water efficient appliances and processes commercially available at reasonable prices. Now, upon passage of your amendment the last major water user, the federal government, will also be adopting conservation measures for its facilities.

I fully support your efforts to promote conservation in federal buildings. I am pleased to support the amendment.

Sincerely,

FIFE SYMINGTON.

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By Mr. KOHL (for himself, Mr. GLENN, and Mr. LEVIN):

S. 1621. A bill to improve supervision and regulation of Government Sponsored Enterprises; to the Committee on Governmental Affairs.

FEDERAL ENTERPRISE REGULATORY ACT

• Mr. KOHL. Mr. President, I rise to introduce a bill entitled the Federal Enterprise Regulatory Act of 1991. This legislation aims to improve supervision and regulation of Government sponsored enterprises. I am pleased to be joined in this effort by my distinguished colleagues, the chairman of the Government Affairs Committee, Mr. GLENN and the chairman of the Subcommittee on Oversight of Government Management, Mr. LEVIN.

Most people have never heard of Government sponsored enterprises [GSE's] and few who have fully understand what they do.

In simple terms, Government sponsored enterprises are financial institutions created and chartered by the Federal Government. They are charged with the task of accomplishing a public policy goal—like providing capital for low- and moderate-income housing, student loans, and money for farmers. GSE's operate in these areas because all too often the private sector does not: the risks are too great and the potential profits are too small.

There are five Government sponsored enterprises: the Federal National Mortgage Association—Fannie Mae—the Federal Home Loan Mortgage Corporation—Freddie Mac—the Federal Home Loan Bank Board [FHLB], the Student Loan Marketing Association—Sallie Mae—and the Farm Credit System [FCS].

GSE's are essentially private, profit making enterprises, but they also possess an implicit Federal guarantee. While it is not explicitly stated, the market believes and it is true that were a GSE to go bankrupt, it would have the full faith and credit of the Government behind it.

The proof of this guarantee is the fact that in 1987, the Government provided $4 billion to bail out the Farm Credit System, although it too had only an implicit guarantee.

The danger is that the Federal guarantee removes the market discipline over risks these entities might take. In short, the private shareholders of GSE's like Fannie Mae and Freddie Mac enjoy handsome returns on their investments while the Government guarantees the potential loss.

In other words, Government sponsored enterprises privatize the profits and socialize the losses.

It is important to understand that this is the same system that produced the S&L fiasco and the current banking crisis.

And the potential scope of the taxpayer loss is immense if the GSE's were to fail: $1 trillion. There is more potential risk in five Government sponsored enterprises then there is in the entire S&L industry.

At this point, none of the GSE's are in imminent danger. In fact, most are successfully carrying out their public policy missions and returning healthy profits to their shareholders. Last year, the largest GSE, Fannie Mae, earned over $1.7 billion in profits. Yet, this same GSE was losing over $1 million a day in the early 1980's.

Just because the GSE's are healthy today does not mean they will be tomorrow.

By and large, the Federal Government does nothing to oversee GSE's for safety and soundness. No audits are taken, no capital standards are set, and nobody regulates their risks. In other words, there is nothing in place to protect taxpayer dollars.

We have already learned through the S&L crisis that this type of loose regulation coupled with a Federal guarantee is a recipe for disaster.

This Nation simply cannot afford another massive taxpayer bailout. For once, the Federal Government ought to apply the lessons it has learned and act before disaster strikes.

Some have said: "If it ain't broke, don't fix it." I would side with the others who say: "Let's fix the roof while the sun is still shining and before it begins to leak."

In order to protect taxpayer dollars and to guarantee that we prevent a future fiasco, I am today introducing with Senators Glenn and Levin the Federal Enterprise Regulatory Act of 1991.

The primary purpose of the proposal is very straightforward, it seeks to establish independent, consistent, and efficient regulation for all Government sponsored enterprises in order to reduce the likelihood of a taxpayer bailout.

The act gives a single Federal regulator—the Federal Enterprise Regulatory Board—the authority to examine and audit the enterprises, require reports from them, impose capital standards, and enforce compliance with the requirements and standards it sets.

Our proposal will bring consistent and coherent safety and soundness regulation to an area where piecemeal regulation exists at best and where no regulation exists at worst.

There are currently a number of different proposals afloat to regulate individual GSE's, but none of the proposals address the overall problem from the taxpayer's point of view.

Rather, the other proposals treat each Government sponsored enterprise as if it were unrelated to any other. To best guarantee that another financial crisis is averted, we must institute a powerful Federal regulator—a so-called super regulator—whose only mission is the safety and soundness of these Government sponsored enterprises and whose main concern is the Federal Government's exposure.

The Federal Enterprise Regulatory Act will return the cop to the beat and will help prevent future financial crises. At a hearing I chaired on July 18 in the Subcommittee on Government Information and Regulation, widespread support for our proposal was voiced by the Comptroller General of the General Accounting Office, the Director of the Congressional Budget Office, an Assistant Secretary at Treasury, and by outside experts in the field.

I am convinced that if we are serious about protecting taxpayer dollars and if we have truly learned the lessons of the S&L bailout, then we must introduce some fiscal morality and responsibility where Federal guarantees and future budget liabilities are at stake. A giant step in this direction would be passage of the Federal Enterprise Regulatory Act.

I urge my colleagues to support this legislation, in order to help ensure that the taxpayers of this nation will not be asked to foot another bill incurred by the deregulation and irresponsibility of the 1980's.

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. 1621

*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 "Federal Enterprise Regulatory Act of 1991."

(b) TABLE OF CONTENTS.—

TITLE I—ESTABLISHMENT OF THE FEDERAL ENTERPRISE REGULATORY BOARD

Sec. 101. Findings.

Sec. 102. Definitions.
Sec. 103. Federal Enterprise Regulatory Board established.
Sec. 104. Management of the Board.
Sec. 105. Compensation and expenses.
Sec. 106. Amendment to section 5313 of title 5, United States Code.
Sec. 107. Duties of the Chairperson.
Sec. 108. Powers of the Board.
Sec. 109. Duties and authority of the Board.
Sec. 110. Operating divisions.
Sec. 111. Administrative expenses.

TITLE II—SUPERVISION AND REGULATION

Sec. 201. Standards for safety and soundness and capital adequacy; system of remedial actions.
Sec. 202. Reports to Board.
Sec. 203. Examinations.
Sec. 204. Board authority over audits; access to records.

TITLE III—GENERAL ENFORCEMENT POWERS

Sec. 301. Definitions.
Sec. 302. Cease-and-desist proceedings.
Sec. 303. Temporary cease-and-desist orders.
Sec. 304. Removal and prohibition authority.
Sec. 305. Suspension or removal of enterprise-affiliated party charged with felony.
Sec. 306. Hearings and judicial review.
Sec. 307. Jurisdiction and enforcement.
Sec. 308. Civil money penalty.
Sec. 309. Notice after separation from service.
Sec. 310. Criminal penalty.
Sec. 311. Notice of service.
Sec. 312. Subpoena power, etc.
Sec. 313. Public disclosure of final orders and agreements.

TITLE IV—CONSERVATORSHIP

Sec. 401. Appointment of conservator.
Sec. 402. Examinations.
Sec. 403. Termination of conservatorship.
Sec. 404. Conservator; powers and duties.
Sec. 405. Liability protection.
Sec. 406. Powers of officers not affected.
Sec. 407. Rules and regulations.

TITLE V—REGULATORY RESTRUCTURING AND CONFORMING AMENDMENTS

Subtitle A. Farm Credit Administration abolished

Sec. 501. Farm Credit Administration and Farm Credit Administration Board abolished.

Subtitle B. Reorganization of Federal Home Loan Banks

Sec. 511. Reorganization of Federal Home Loan Banks.

Subtitle C. Amendments to Related Acts

Sec. 521. Amendments to Federal National Mortgage Association Act.
Sec. 522. Amendments to Federal Home Loan Mortgage Corporation Act.
Sec. 523. Amendments to Higher Education Act of 1965.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Comptroller General audit and access to records.
Sec. 602. Inconsistent provisions.
Sec. 603. Effective date.

## TITLE I—ESTABLISHMENT OF THE FEDERAL ENTERPRISE REGULATORY BOARD

**SEC. 101. FINDINGS.**

The Congress finds that—

(1) the Federal Government needs enhanced authority to oversee the safety and soundness of Government-sponsored enterprises, in order to reduce the risk that they will incur losses at taxpayer expense;

(2) creation of a single Federal regulator with responsibility for overseeing the safety and soundness and public policy functions of Government-sponsored enterprises should assure strong and independent oversight, promote consistent treatment of enterprises facing similar risks, and result in operational efficiencies; and

(3) in order to fully protect against losses, the Federal regulator needs authority to establish capital rules and other standards for the safe and sound operation of Government-sponsored enterprises, and to monitor and enforce compliance with those standards.

**SEC. 102. DEFINITIONS.**

As used in this Act—

(a) BOARD.—The term "Board" means the Federal Enterprise Regulatory Board.

(b) CHAIRPERSON.—Unless otherwise provided, the term "Chairperson" means the Chairperson of the Board.

(c) ENTERPRISE.—The term "enterprise" means—

(1) the Federal National Mortgage Association;

(2) the Federal Home Loan Mortgage Corporation;

(3) the Student Loan Marketing Association;

(4) each Federal Home Loan Bank, beginning January 1, 1993; and

(5) the Federal Agricultural Mortgage Corporation.

(d) FARM CREDIT BANKS.—The term "Farm Credit Bank" means those banks chartered in accordance with section 1.3(b) of the Farm Credit Act of 1971 (12 U.S.C. 2011(b)) and those related associations chartered in accordance with section 2.0 of the Farm Credit Act of 1971 (12 U.S.C. 2071).

(e) BANKS FOR COOPERATIVES.—The term "Banks for Cooperatives" means those banks established in accordance with title III of the Farm Credit Act of 1971 (12 U.S.C. 2121 et seq.).

(f) FARM CREDIT SYSTEM INSURANCE CORPORATION.—The term "Farm Credit System Insurance Corporation" means that entity established under section 5.52 of the Farm Credit Act of 1971 (12 U.S.C. 2271a–1).

**SEC. 103. FEDERAL ENTERPRISE REGULATORY BOARD ESTABLISHED.**

(a) PURPOSE.—The purpose of the Federal Enterprise Regulatory Board is to oversee the enterprises in order to ensure their safety and soundness and compliance with their public purposes.

(b) ESTABLISHMENT OF THE FEDERAL ENTERPRISE REGULATORY BOARD.—Effective January 1, 1992, there shall be established a mixed-ownership government corporation to be known as the Federal Enterprise Regulatory Board.

(c) STATUS AS AN AGENCY FOR CERTAIN PURPOSES.—The Federal Enterprise Regulatory Board shall be an "agency" of the United States for purposes of subchapter II of chapter 5 and chapter 7 of title 5, United States Code, and title 18 of the United States Code.

(d) MIXED-OWNERSHIP GOVERNMENT CORPORATION.—Section 9101(2) of title 31, United States Code, is amended by adding at the end thereof:

"(N) the Federal Enterprise Regulatory Board."

**SEC. 104. MANAGEMENT OF THE BOARD.**

(a) VOTING MEMBERS.—The management of the Board shall be vested in a Board of Directors consisting of three voting members—

(1) one of whom shall be the Secretary of the Treasury;

(2) one of whom shall be the Chairman of the Federal Reserve Board; and

(3) one of whom shall be appointed by the President and confirmed by the Senate who shall serve full time as Chairperson of the Board. The Chairperson may not be affiliated with any enterprise at the time of his or her appointment, while serving on the Board, or for a period of one year after serving on the Board; and

(b) QUALIFICATIONS OF CHAIRPERSON.—The Chairperson shall be appointed without regard to political affiliation and solely on the basis of—

(1) professional standing, suitability for the position and integrity;

(2) extensive practical experience and distinguished record of achievement in finance, banking, and financial systems regulation in large governmental or business entities;

(3) substantial knowledge and understanding of government-sponsored enterprises, secondary-lending markets and primary credit markets;

(4) and clearly demonstrated ability to regulate multi-billion financial institutions, represent the interests of the board before the Congress, the public and the industries being regulated and within the Executive Branch, act in the public interest and carry out the functions and duties of the board and office, effectively, vigorously and impartially.

(c) NON-VOTING MEMBERS.—The Board of Directors shall also include the following three non-voting members—

(1) the Secretary of Agriculture;

(2) the Secretary of Education; and

(3) the Secretary of Housing and Urban Development.

(d) TERMS.—

(1) INDEPENDENT MEMBER.—The independent member serving as Chairperson of the Board shall be appointed for a term of 6 years.

(2) INTERIM APPOINTMENTS.—A vacancy in the position of the Chairperson occurring before the expiration of the term for which the Chairperson was appointed shall be filled through appointment by the President, and the member appointed to fill such vacancy shall be appointed only for the remainder of said term.

(3) CONTINUATION OF SERVICE.—A member appointed to serve as Chairperson may continue to serve after the expiration of the term of office to which the member was appointed until a successor Chairperson has been appointed.

(e) QUORUM.—A quorum shall consist of two of the voting members of the board of directors or their proxies designated under subsection (e). None of the non-voting members of the board of directors shall count toward a quorum.

(f) PROXIES.—The Secretary of the Treasury may designate a member of the Department of the Treasury, and the Chairman of the Federal Reserve Board may designate a representative of the Federal Reserve System, as proxies to carry out their responsibilities on the Board in the event of their absence.

**SEC. 105. COMPENSATION AND EXPENSES.**

(a) EXPENSES.—Members of the Board shall receive allowances in accordance with subchapter I of chapter 57 of title 5, United States Code, for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Board, as set forth in the bylaws issued by the Board.

(b) NO ADDITIONAL COMPENSATION FOR UNITED STATES OFFICERS OR EMPLOYEES.—Members of the Board (other than the Chairperson) shall receive no additional pay by reason of their service on such Board.

**SEC. 106. AMENDMENT TO SECTION 5313 OF TITLE 5, UNITED STATES CODE.**

Section 5313 of title 5, United States Code, is amended by inserting at the end "Chairperson of the Federal Enterprise Regulatory Board.".

**SEC. 107. DUTIES OF THE CHAIRPERSON.**

The Chairperson shall be the chief executive officer of the Board, and shall oversee the day-to-day operations of the staff of the Board.

**SEC. 108. POWERS OF THE BOARD.**

The Board shall be a body corporate that, acting through its board of directors, shall have the power to—

(1) adopt, alter, and use a corporate seal;

(2) fix the number and duties of, and appoint, employees of the board, who shall be subject to all laws applicable to employees of the United States;

(3) set and adjust rates of basic pay for employees of the Board subject to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code;

(4) with the consent of any executive agency, department, or independent agency utilize the information, services, staff, and facilities of such department or agency, or a reimbursable basis, in carrying out this section;

(5) prescribe bylaws that are consistent with law to provide for the manner in which—

(A) its officers and employees are selected, and

(B) its general operations are to be conducted;

(6) enter into contracts and modify or consent to the modification of any contract or agreement;

(7) sue and be sued in courts of competent jurisdiction;

(8) acquire, hold, lease, mortgage, maintain, or dispose of, at public or private sale, real and personal property, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to the operations of the Board; and

(9) exercise any and all powers established under this Act, and such incidental powers as are necessary to carry out its powers, duties, and functions under this Act.

**SEC. 109. DUTIES AND AUTHORITY OF THE BOARD.**

(a) EXCLUSIVE AUTHORITY OF THE BOARD.—The Board shall have the exclusive authority to make such determinations and to take such actions as are deemed necessary with respect to a specific enterprise regarding—

(1) an enterprise's compliance with its statutory purposes and standards of safety and soundness set by the Board;

(2) an examination of an enterprise;

(3) a decision to appoint a conservator for an enterprise; and

(4) any enforcement action under title III, including the final decision in a contested administrative enforcement proceeding.

(b) RULEMAKING AUTHORITY.—The Board may prescribe such regulations and issue such orders as the Board may determine to be necessary or appropriate for carrying out any law within the Board's jurisdiction.

(c) DELEGATION OF AUTHORITY.—The Board may delegate to any employee, representative or agent, any authority of the Board, except with regard to promulgation of rules and regulations in accordance with section 553 of title 5, adjudications under section 554 of title 5, and determinations to appoint a conservator under title IV of this Act.

**SEC. 110. OPERATING DIVISIONS.**

The Board shall consist of two or more operating divisions including—

(1) the Farm Credit System Division, which shall have general supervisory and regulatory authority for the Farm Credit Banks and the Banks for Cooperatives;

(2) one or more other divisions which shall have general supervisory and regulatory authority for the other enterprises; and

(3) such other operating and administrative components as the Board may determine appropriate.

**SEC. 111. ADMINISTRATIVE EXPENSES.**

(a) IN GENERAL.—The Board may impose a semiannual assessment on each enterprise which shall be related to the expenses of the Board in supervising and regulating the enterprise. Subject to subsection (d) of this section, the aggregate amount of the Board's assessment on the enterprises shall be sufficient to provide for the payment of the Board's estimated expenses for the period for which such assessments are made.

(b) DEFICIENCIES.—If, at any time, amounts available from any assessment for any semiannual period are insufficient to cover the expenses of the Board incurred in carrying out the provisions of this Act during such period, the Board may make an immediate assessment against the enterprises to cover the amount of the deficiency for such semiannual period.

(c) SURPLUSES.—If, at the end of any semiannual period for which an assessment is made, any amount remains from such assessment, such amount shall be deducted from the assessment on the enterprises by the Board for the following semiannual period.

(d) TRANSITION PROVISION.—

(1) START-UP EXPENSES.—The Secretary of the Treasury shall make available for use by the Board a sum not to exceed $10,000,000 no later than January 1, 1992.

(2) REPAYMENT FROM ASSESSMENTS.—The Board shall repay the amounts made available under this subsection, including any interest thereon, no later than January 1, 1995, from assessments imposed under this section.

## TITLE II—SUPERVISION AND REGULATION

**SEC. 201. STANDARDS FOR SAFETY AND SOUNDNESS AND CAPITAL ADEQUACY; SYSTEM OF REMEDIAL ACTIONS.**

(a) DEFINITIONS.—(1) As used in this section, the term "capital" means, as determined in accordance with generally accepted accounting principles, the sum of—

(A) the par value of outstanding common stock;

(B) the par value of outstanding preferred stock;

(C) paid-in capital; and

(D) retained earnings.

(2) For purposes of subsection (c)(3)(A)(ii) only, the term "capital" shall also include subordinated debt in such amounts and with such features as may be prescribed by the Board.

(b) IN GENERAL.—The Federal Enterprise Regulatory Board shall by regulation establish—

(1) standards for the safe and sound operation of each enterprise; and

(2) criteria and timeframes for remedial actions the Board shall take to address noncompliance with the standards.

(c) STANDARDS AND REMEDIAL ACTIONS.—The standards and actions referred to in subsection (b) shall include the following:

(1) Soundness of management and internal controls.—

(A) Standards.—Standards for management and internal controls shall include requirements concerning an enterprise's management; lending and risk-control policies; loan documentation; underwriting standards; information systems; and internal audit systems.

(B) Remedial actions.—Actions for failure to comply with these standards shall include requiring a corrective plan acceptable to the Board; restricting asset or liability growth; restricting activities; and requiring higher capital levels.

(2) Quality of Assets and Earnings.—

(A) Standards.—Asset and earnings standards may include requirements concerning the quality of assets held or securities guaranteed by an enterprise and acceptable earnings levels.

(B) Remedial actions.—Actions for failure to comply with these standards may include requiring a corrective plan acceptable to the Board; restricting asset or liability growth; restricting activities; restricting dividend payments; and requiring higher capital levels.

(3) Minimum Capital.—

(A) Standards.—The minimum capital standard for each enterprise shall equal the sum of—

(i) an amount of capital the Board determines sufficient to enable the enterprise to maintain positive capital to cover for interest rate and credit risk, independently, under economic circumstances that are determined stressful for the enterprise by the Board; and

(ii) an amount the Board determined sufficient to protect against management risk, operations risk, and business risk, which shall be a fixed percentage of the enterprise's on-balance sheet assets and off-balance sheet obligations as determined according to generally accepted accounting principles. The percentage fixed by the Board may consist of separate percentages of the enterprise's on-balance sheet assets and off-balance sheet obligations.

(B) Remedial actions.—Actions for failure to comply with this standard may include requiring a capital restoration plan acceptable to the Board; requiring recapitalization through the sale of stock or other assets; restricting asset or liability growth; restricting activities; restricting dividend payments; and prohibiting principal or interest payments on subordinated debt.

(4) Substantially insufficient capital.—

(A) Standards.—The standard for substantially insufficient capital shall be a minimum solvency standard for each enterprise.

(B) Actions.—For any enterprise failing to comply with this standard, the Board shall appoint a conservator.

(5) Inappropriate compensation and benefits.—

(A) Standards.—Standards for compensation and benefits provided by an enterprise to its directors, officers and employees shall include but need not be limited to requirements prohibiting: compensation in excess of that which is reasonable and commensurate with an individual's duties and responsibilities; employment agreements which would constitute an unsafe or unsound practice; and pension or other benefit plans or arrangements which, due to unreasonable costs, risks or any other reason, could lead to material financial loss to the enterprise.

(B) Remedial actions.—Actions for failure to comply with these standards may include but need not be limited to: requiring a corrective plan acceptable to the Board; restricting activities; requiring the enterprise to recoup excessive compensation or benefits; requiring the enterprise to restructure employment or benefit agreements; and requiring alterations in compensation, benefit or personnel policies.

(d) EXCEPTIONS.—The Board may modify, defer, or cancel any action required by the regulations under this section only if the Board determines in writing that such modification, deferral, or cancellation is in the public interest or for the protection of the Federal Government.

(e) AVAILABILITY AND ENFORCEMENT OF ACTIONS.—

(1) ACTIONS FOR VIOLATION OF MINIMUM CAPITAL STANDARDS.—No remedial action shall be taken for the failure of an enterprise to meet the minimum capital standard established under subsection (c)(3) of this section until January 1, 1995.

(2) ENFORCEMENT.—Remedial actions under this section shall be enforced under title III of this Act.

(3) AVAILABILITY OF OTHER ACTIONS.—The system prescribed in this section shall not in any way limit or supersede the authority of the Board to take more stringent action.

(f) DEADLINE FOR REGULATIONS.—Final regulations required under this section shall be promulgated not later than January 1, 1994.

**SEC. 202. REPORTS TO BOARD.**

(a) REPORTS OF CONDITION AND OPERATIONS; FORM; CONTENT; DATE OF MAKING.—

(1) REGULAR REPORTS.—Each enterprise shall make to the Federal Enterprise Regulatory Board annual and quarterly reports of financial condition and operations which shall be in such form, shall contain such information, and shall be made on such dates as the Board shall require.

(2) STANDARDS FOR ANNUAL REPORT.—Each annual report shall contain financial statements prepared in accordance with generally accepted accounting principles and a statement of internal accounting and administrative control systems by the head of each enterprise, consistent with the requirements for agency statements on internal accounting and administrative control systems under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255).

(3) CERTIFICATION OF REPORTS.—Reports of financial condition and operations shall be certified as follows:

(A) Annual reports of financial condition and operations shall be certified by an independent public accountant; and

(B) Quarterly reports shall contain a declaration by the president, a vice president, the treasurer, the chief executive officer, or by any other officer designated by the board of directors of the enterprise to make such declaration, that the report is true and correct to the best of his or her knowledge and belief. The correctness of the report of condition shall be attested by the signatures of at least three of the directors of the enterprise other than the officer making such declaration, with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct.

(b) AUDIT OF ANNUAL REPORTS.—

(1) INDEPENDENT AUDIT REQUIRED.—The financial statements contained in the annual reports of the enterprises required under this section shall be audited by an independent external auditor.

(2) *Auditing standards.*—Audits under this subsection shall be conducted in accordance with generally accepted government auditing standards.

(3) REPORTS ON AUDITS.—Upon completion of the audit required by this subsection, the person who audits the statement shall submit a report on the audit to the head of the enterprise, to the Chairperson of the Board, and to any Congressional committee having jurisdiction over the Board and the particular enterprise.

(4) REVIEW BY COMPTROLLER GENERAL.—The Comptroller General of the United States may review any audit of a financial statement conducted under this subsection. Upon request of the Comptroller General, an enterprise shall provide to the Comptroller General or any representative all books, accounts, financial records, reports, files, workpapers, and property belonging to or in use by the enterprise and its auditor that the Comptroller General considers necessary to the performance of any review under this section.

(c) ADDITIONAL AND SPECIAL REPORTS.—The Board may require additional reports from the enterprises, in such form and containing such information as the Board may prescribe, on dates to be fixed by the Board, and may require special reports from any particular enterprise whenever, in the Board's judgment, such reports are necessary for the Board to carry out the purposes of this Act.

(d) PENALTIES.—

(1) (A) FIRST TIER.—If an enterprise—

(i) maintains procedures reasonably adopted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make any report required under this paragraph, within the period of time specified by the Board, or submits any false or misleading report or informtion, or

(ii) inadvertently transmit any report which is minimally late.

the enterprise shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected.

(B) The enterprise shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted late.

(2) SECOND TIER.—If an enterprise fails to make any report required under this section within the period of time specified by the Board, or submits any false or misleading report or information, in a manner not described in paragraph (1) of this subsection, the enterprise shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) THIRD TIER.—Notwithstanding paragraph (2), if an enterprise knowingly or with reckless disregard for the accuracy of any information or report described in such paragraph submits any false or misleading report or information, the Board may assess a penalty of not more than $1,000,000 or 1 percent of total assets of the enterprise, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) ASSESSMENT AND COLLECTION.—Any penalty imposed under this subsection shall be assessed and collected by the Board in the manner provided in section 308 (e), (f), (g), (i), and (j) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

(5) HEARING.—An enterprise shall be afforded a hearing with respect to any penalty assessed under this subsection, if the enterprise submits a written request for such hearing within 20 days after the issuance of the notice of assessment. Section 306 shall apply to any proceeding under this subsection.

(e) DIVIDENDS.—Each enterprise shall make the Board advance reports of any dividends to be declared or paid in such cases and under such conditions as the Board determines necessary, in such form and at such times as it may require.

**SEC. 203. EXAMINATIONS.**

(a) APPOINTMENT OF EXAMINERS.—The Board shall appoint examiners to examine the enterprises.

(b) EXAMINATIONS.—Examiners appointed under subsection (a) shall examine each enterprise whenever the Board determines that an examination is necessary, but not less than once every twelve-month period.

(c) TECHNICAL EXPERTS.—The Board is authorized to contract for the services of such technical experts as the Board determines necessary and appropriate to provide temporary technical assistance to any examiner appointed under subsection (a).

(d) POWER AND DUTY OF EXAMINERS.—Each examiner appointed under subsection (a) shall—

(1) have the power, on behalf of the Board, to make a thorough examinaion of any enterprise under subsection (b); and

(2) make a full and detailed report of condition of the enterprise examined to the Board.

(e) ADMINISTRATION OF OATHS AND AFFIRMATIONS; EVIDENCE; SUBPOENA POWERS.—In connection with examinations of the enterprises, the Board is authorized to administer oaths and affirmations, examine and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of any enterprise or affiliate thereof, and to exercise such other powers as are set forth in section 312.

(f) PRESERVATION OF RECORDS BY PHOTOGRAPHY.—

(1) IN GENERAL.—The Board may cause any and all records, papers, or documents kept by the Board or in the Board's possession or custody to be photographed or microphotographed or otherwise reproduced upon film, in a manner that shall comply with the minimum standards of quality approved for permanent photographic records by the National Institute of Standards of Technology.

(2) DEEMED AS ORIGINALS.—Such photographs, microphotographs, or photographic film or copies thereof shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

(3) PRESERVATION.—Such photographs, microphotographs, or reproductions shall be preserved in such manner as the Board shall prescribe, and the original records, papers, or documents may be destroyed or otherwise disposed of as the Board shall direct.

**SEC. 204. BOARD AUTHORITY OVER AUDITS: ACCESS TO RECORDS.**

(a) AUDITS.—Each audit of an enterprise by the enterprise or by an outside auditor shall be subject to review and verification by the Board. The Board shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians.

(b) ACCESS TO RECORDS.—All books, records, accounts, reports, files, and all other papers, things, or property belonging to or used by an enterprise or by an auditor of an enterprise in connection with an audit of an enterprise shall be made available to the Board.

TITLE III—GENERAL ENFORCEMENT POWERS

**SEC. 301. DEFINITIONS.**

(a) ENTERPRISE—AFFILIATED PARTY.—For purposes of this title, the term "enterprise-affiliated party" means—

(1) any director, officer, employee, or controlling stockholder of, or agent for, and enterprise;

(2) any shareholder, consultant, joint venture partner, and any other person as determined by the Federal Enterprise Regulatory Board (by regulation or on a case-by-case basis) who participates in the conduct of the affairs of an enterprise; and

(3) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(A) any violation of any law or regulation;

(B) any breach of fiduciary duty; or

(C) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the enterprise.

(b) VIOLATION.—The term "violation" includes any action (alone or with another or others) which causes, counsels, brings about or aids and/or abetts a violation.

**SEC. 302. CEASE-AND-DESIST PROCEEDINGS.**

(a) GROUNDS FOR ISSUANCE.—The Federal Enterprise Regulatory Board may issue and serve upon an enterprise or enterprise-affiliated party a notice of charges if, in the opinion of the Board, such party—

(1) is engaging or has engaged, or the Board has reasonable cause to believe that the enterprise or enterprise-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the enterprise; or

(2) is violating or has violated, or the Board has reasonable cause to believe that the enterprise or enterprise-affiliated party is about to violate—

(A) a law, rule, or regulation, including any standard established pursuant to section 201;

(B) any condition imposed in writing by the Board in connection with the granting of any application or other request by the enterprise; or

(C) any written agreement entered into with the Board.

(b) PROCEDURE.—

(1) NOTICE OF CHARGES.—Any notice of charges shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing shall be held to determine whether an order to cease and desist therefrom should issue against enterprise or enterprise-affiliated party.

(2) DATE OF HEARING.—Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Board at the request of any party served.

(3) FAILURE TO APPEAR CONSTITUTES CONSENT.—Unless the party so served appears at the hearing personally or by a duly authorized representative, such party shall be deemed to have consented to the issuance of the cease-and-desist order.

(4) ISSUANCE OF ORDER.—In the event of such consent, or if, upon the record made at any such hearing, the Board shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the enterprise or enterprise-affiliated party and order requiring such party to cease and desist from any such violation or practice and to take affirmative action to correct the conditions resulting from any such violation or practice.

(c) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority under this section to issue any order which requires an enterprise or enterprise-affiliated party to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such party to—

(1) make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(A) the enterprise or enterprise-affiliated party was unjustly enriched in connection with such violation or practice; or

(B) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Board;

(2) restrict the growth of the enterprise;

(3) dispose of any asset involved;

(4) rescind agreements or contracts;

(5) employ qualified officers or employees (who may be subject to approval by the Board at the direction of the Board);

(6) take any action specified in section 201; and

(7) take such other action as the Board determines appropriate.

(d) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this section includes the authority to place limitations on the activities or functions of the enterprise or any enterprise-affiliated party.

(e) EFFECTIVE DATE.—A cease-and-desist order shall become effective at the expiration of 30 days after the service of such order upon the enterprise or enterprise-affiliated party (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a court of competent jurisdiction.

**SEC. 303. TEMPORARY CEASE-AND-DESIST ORDERS.**

(a) GROUNDS FOR ISSUANCE; SCOPE.—(1) Whenever the Board determines that any violation, threatened violation, or unsafe or unsound practice, specified in the notice of charges served upon the enterprise or enterprise-affiliated party pursuant to section 302(a), or the continuation thereof, is likely to—

(A) cause insolvency or significant dissipation of assets or earnings of the enterprise; or

(B) weaken the condition of the enterprise prior to the completion of the proceedings conducted pursuant to section 302(b), the Board may issue a temporary order requiring the enterprise, or any enterprise-affiliated party, to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, or condition pending completion of such proceedings.

(2) An order under this subsection may include any requirement authorized under section 302(c).

(b) EFFECTIVE DATE.—An order issued pursuant to subsection (a) shall become effective upon service upon the enterprise or enterprise-affiliated party and, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (d), shall remain effective and enforceable pending the completion of the proceedings pursuant to such notice and shall remain effective until such time as the Board dismisses the charges specified in such notice or until superseded by a cease-and-desist order issued pursuant to section 302.

(c) INCOMPLETE OR INACCURATE RECORDS.—

(1) TEMPORARY ORDER.—If a notice of charges served under subsection (a) of section 302 specifies that the enterprise's books and records are so incomplete or inaccurate that the Board is unable, through the normal supervisory process, to determine the financial condition of that enterprise or the details or the purpose of any transaction that may have a material effect on the financial condition of that enterprise, the Board may issue a temporary order requiring—

(A) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(B) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under section 302.

(2) EFFECTIVE PERIOD.—Any temporary order issued under paragraph (1)—

(A) shall become effective upon service; and

(B) unless set aside, limited, or suspended by a court in proceedings under subsection (d), shall remain in effect and enforceable until the earlier of—

(i) the completion of the proceeding initiated under section 302 in connection with the notice of charges; or

(ii) the date the Board determines, by examination or otherwise, that the enterprise's books and records are accurate and reflect the financial condition of the enterprise.

(d) JUDICIAL REVIEW.—Within 10 days after the enterprise or enterprise-affiliated party has been served with a temporary cease-and-desist order pursuant to this section, such party may apply to the United States district court for the judicial district in which the home office of the enterprise is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the enterprise or enterprise-affiliated party under section 302(a), and such court shall have jurisdiction to issue such injunction.

(e) ENFORCEMENT.—In the case of violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Board may, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, apply to the United States district court for the judicial district in which the home office of the enterprise is located, or the United States District Court for the District of Columbia for an injunction to enforce such order, and, if the court finds any such violation, threatened violation, or failure to obey, it shall issue such injunction.

**SEC. 304. REMOVAL AND PROHIBITION AUTHORITY.**

(a) AUTHORITY TO ISSUE ORDER.—The Board may serve upon any director (other than a director appointed and subject to removal by the President) or other enterprise-affiliated party a written notice of the Board's intention to remove such party from office or to prohibit any further participation, in any manner, in the conduct of the affairs of the enterprise whenever the Board determines that—

(1) such party has directly or indirectly—

(A) violated—

(i) any law or regulation;
(ii) any cease-and-desist order which has become final;
(iii) any condition imposed in writing by the Board in connection with the grant of any application or other request by the enterprise; or
(iv) any written agreement between the enterprise and the Board;
(B) engaged or participated in any unsafe or unsound practice in connection with the enterprise; or
(C) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;
(2) by reason of the violation, practice, or breach described in any clause or paragraph (1)—
(A) the enterprise has suffered or will probably suffer financial loss or other damage; or
(B) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and
(3) such violation, practice, or breach—
(A) involves personal dishonesty on the party of such party; or
(B) demonstrates willful or continuing disregard by such party for the safety or soundness of the enterprise.

(b) SUSPENSION ORDER.—
(1) SUSPENSION OR PROHIBITION AUTHORIZED.—If the Board serves written notice under subsection (a) to a director or other enterprise—affiliated party, the Board may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the enterprise, if the Board—
(A) determines that such action is necessary for the protection of the enterprise; and
(B) serves upon such party written notice of the suspension order.
(2) EFFECTIVE PERIOD.—Any suspension order issued under paragraph (1)—
(A) shall become effective upon service; and
(B) unless a court issues a stay of such order under subsection (f), shall remain in effect and enforceable until—
(i) the date the Board dismisses the charges with respect to such party; or
(ii) the effective date of an order issued by the Board to such party under subsection (a).
(3) COPY OF ORDER.—If the Board issues a suspension order under subsection (b) to any director or other enterprise-affiliated party, the Board shall serve a copy of such order on the enterprise at the time such order is issued.

(c) PROCEDURE.—
(1) NOTICE.—A notice of intention to remove a director or other enterprise-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of the enterprise under subsection (a) shall contain a statement of the facts constituting grounds therefor and shall fix a time and place at which a hearing shall be held thereon.
(2) DATE OF HEARING.—Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Board at the request of such party and for good cause shown, or the Attorney General of the United States.
(3) FAILURE TO APPEAR DEEMED CONSENT.—Unless such party appears at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition.
(4) ISSUANCE OF ORDER.—In the event of such consent, or if upon the record made at any such hearing, the Board finds that any of the grounds specified in such notice have been established, the Board may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the enterprise, as it determines appropriate.
(d) EFFECTIVE DATE.—Any such order shall become effective at the expiration of 30 days after service upon the enterprise, director or other enterprise-affiliated party (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a court of competent jurisdiction.
(e) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this section shall not—
(1) participate in any manner in the conduct of the affairs of any enterprise, institution, or agency specified in subsection (f)(1);
(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote, any proxy, consent, or authorization with respect to any voting rights in any entity described in paragraph (1);
(3) violate any voting agreement previously approved by the Board; or
(4) vote for a director, or serve or act as a director or other enterprise-affiliated party.

(f) INDUSTRYWIDE PROHIBITION.—
(1) IN GENERAL.—Except as provided in paragraph (2), any director or other enterprise-affiliated party who, pursuant to an order issued under this section, has been removed or suspended from office in an enterprise or prohibited from participating in the conduct of the affairs of an enterprise may not, while such order is in effect, continue or commence to hold any office, in, or participate in any manner in the conduct of the affairs of—
(A) any insured depository institution as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));
(B) any depository institution or institution treated as an insured bank under section 8(b)(3) or 8(b)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3), (b)(4)), or as a savings association under section 8(b)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(8));
(C) any insured credit union as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7));
(D) any institution chartered under the Farm Credit Act of 1971;
(E) any enterprise as defined in section 102 of this Act;
(F) the Government National Mortgage Association;
(G) any appropriate Federal financial institutions regulatory agency; and
(H) the Resolution Trust Corporation.
(2) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this section which removes or suspends from office any director or other enterprise-affiliated party or prohibits such party from participating in the conduct of the affairs of an enterprise, such party receives the written consent of—
(A) the Board; and
(B) the appropriate Federal financial institutions regulatory agency of the institution described in paragraph (1) in which such party proposes to hold office or in the conduct of whose affairs such party proposes to participate,
paragraph (1) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in such written consent. Any agency that grants such a written consent shall report such action to the Board and publicly disclose such consent.
(3) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of paragraph (1) by any person who is subject to an order described in such paragraph shall be treated as a violation of the order.
(4) APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY DEFINED.—For purposes of this subsection and section 310 the term "appropriate Federal financial institutions regulatory agency" means—
(A) the Board, in the case of an enterprise;
(B) the Secretary of the Department of Housing and Urban Development, in the case of the Government National Mortgage Association;
(C) the appropriate Federal banking agency as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), in the case of an insured depository institution;
(D) until January 1, 1993, the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971, and, after that date, by the Board;
(E) until January 1, 1993, the Federal Housing Finance Board in the case of a Federal Home Loan Bank, and, after that date, by the Board;
(F) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7)); and
(G) the Oversight Board, in the case of the Resolution Trust Corporation.
(5) CONSULTATION BETWEEN AGENCIES.—The agencies described in paragraph (2) shall consult with each other before providing any written consent authorized by paragraph (2).

(g) STAY OF SUSPENSION OR PROHIBITION.—Within ten days after any director or other enterprise-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of an enterprise under subsection (b), such party may apply to the United States district court for the judicial district in which the home office of the enterprise is located, or the United States District Court for the District of Columbia, for a stay of such suspension or prohibition pending the completion of the administative proceedings pursuant to the notice served upon such party under subsection (a), and such court shall have jurisdiction to stay such suspension or prohibition.

(h) DIRECTORS APPOINTED BY THE PRESIDENT.—The Board may notify the President of any director of an enterprise on whom the Board would have served a notice of intention to remove the director or to prohibit the director from participating in the conduct of the affairs of the enterprise under subsection (a) but for the fact that that director was appointed and subject to removal by the President. The Board shall include in such notice the grounds for issuance of the notice of intention.

**SEC. 305. SUSPENSION OR REMOVAL OF ENTERPRISE-AFFILIATED PARTY CHARGED WITH FELONY.**

(a) SUSPENSION.—Whenever an enterprise-affiliated party (other than a director appointed and subject to removal by the President) is charged in any information, indictment, or complaint with the commission of, or participation in, a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Board may, if continued service or participation by

such party may threaten to impair public confidence in the enterprise, by written notice served upon such party suspend them from office or prohibit them from further participation in any manner in the conduct of the affairs of the enterprise. A copy of such notice shall also be served upon the enterprise.

(b) EFFECTIVE PERIOD.—Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Board.

(c) REMOVAL.—In the event a conviction or an agreement to enter a pre-trial diversion or other similar program is entered against an enterprise director or any other enterprise-affiliated party (other than a director appointed and subject to removal by the President), and at such time as such judgment is not subject to further appellate review, the Board may, if continued service or participation by such party may threaten to impair public confidence in the enterprise, issue and serve upon such party an order removing him or her from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the enterprise except with the consent of the Board. A copy of such order shall also be served upon the enterprise, whereupon such party shall cease his or her association with the enterprise.

(d) DISCRETIONARY REMOVAL NOT PRECLUDED.—A finding of not guilty or other disposition of the charge shall not preclude the Board from instituting proceedings to remove such party from office or to prohibit further participation in the affairs of the enterprise pursuant to subsection (a) or (b) of section 304.

(e) EFFECTIVE DATE.—Any notice or suspension or order of removal issued under this section shall remain effective until the completion of any hearing or appeal authorized under subsection (g), unless earlier terminated by the Board.

(f) VACANCIES ON THE BOARD OF DIRECTORS.—

(1) QUORUM.—If, at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of an enterprise less than a quorum, all powers and functions vested in, or exercisable by, such board shall vest in and be exercisable by the remaining director or directors, until such time as there shall be a quorum of the board of directors.

(2) ALL DIRECTORS SUSPENDED.—In the event all of the directors of the enterprise are suspended pursuant to this section, the Board shall appoint temporary directors pending the termination of such suspensions or until such time as the terms of the suspended directors expire and their successors take office.

(g) HEARING.—

(1) REQUEST FOR HEARING.—Within 30 days from service of any notice of suspension or order of removal issued pursuant to subsection (a), the party concerned may request in writing an opportunity to appear before the Board to show that the continued service to or participation in the conduct of the affairs of the enterprise by such party does not, or is not likely to, threaten to impair public confidence in the enterprise.

(2) TIME AND PLACE OF HEARING; HEARING.—Upon receipt of any such request, the Board shall fix a time (not more than 30 days after receipt of such request, unless extended at the request of such party), and a place at which such party may appear, personally or through a representative, before the Board to submit written materials (or, at the discretion of the Board, oral testimony) and oral argument.

(3) DECISION OF THE BOARD.—Within 60 days of such hearing, the Board shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the enterprise shall be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting further participation in any manner in the conduct of the affairs of the enterprise shall be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Board's decision, if adverse to such party.

(h) RULEMAKING.—The Board is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this section.

(i) DIRECTORS APPOINTED BY THE PRESIDENT.—The Board may notify the President of any director of an enterprise on whom the Board would have served a notice of suspension or removal under this section but for the fact that the director was appointed and subject to removal by the President. The Board shall include in such notice the grounds upon which a suspension or removal would have been effected.

**SEC. 306. HEARINGS AND JUDICIAL REVIEW.**

(a) Any hearing provided for in this title (other than the hearing provided for in section 305)—

(1) shall be held in the Federal judicial district or in the territory in which the home office of the enterprise is located, unless the party afforded the hearing consents to another place; and

(2) shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code.

(b)(1) After such hearing, and within 90 days after the Board has notified the parties that the case has been submitted to the Board for final decision, the Board shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this title.

(2) Judicial review of any such order shall be exclusively as provided in subsection (c). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subsection (c), and thereafter until the record in the proceeding has been filed as so provided, the Board may at any time, upon such notice and in such manner as it shall determine proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Board may modify, terminate, or set aside any such order with permission of the court.

(c)(1) Any party to any proceeding under subsection (a) may obtain a review of any order served pursuant thereto (other than an order issued with the consent of the enterprise or enterprise-affiliated party concerned, or an order issued under section 305) by the filing in the court of appeals of the United States for the circuit in which the home office of the enterprise is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Board be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board.

(2) Upon receiving a copy of a petition, the Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(3) Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Board shall (except as provided in the last sentence of subsection (b)(2)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Board.

(4) Review of such proceedings shall be governed by chapter 7 of title 5, United States Code.

(d) NO AUTOMATIC STAY.—The commencement of proceedings for judicial review under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Board.

**SEC. 307. JURISDICTION AND ENFORCEMENT.**

(a) APPLICATION FOR ENFORCEMENT.—The Board may, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the enterprise is located, for the enforcement of any effective notice or order issued under this title, and such court shall have jurisdiction and power to order and require compliance herewith.

(b) LIMITATION ON MODIFICATION.—Except as otherwise provided in this title, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

**SEC. 308. CIVIL MONEY PENALTY.**

(a) FIRST TIER.—An enterprise which, and any enterprise-affiliated party thereof who,—

(1) violates any law or regulation,

(2) violates any final order or temporary order issued pursuant to sections 302, 303, 304, or 305,

(3) violates any condition imposed in writing by the Board in connection with the grant of any application or other request by an enterprise, or

(4) violates any written agreement between an enterprise and the Board, shall be subject to a civil penalty of not more than $5,000 for each day during which such violation continues.

(b) SECOND TIER.—Notwithstanding subsection (a), an enterprise which, and any enterprise-affiliated party thereof who,—

(1) (A) commits any violation described in any clause of subsection (a),

(B) recklessly engages in an unsafe or unsound practice in conducting the affairs of an enterprise, or

(C) breaches any fiduciary duty, and

(2) which violation, practice, or breach—

(A) is part of a pattern of misconduct,

(B) causes or is likely to cause more than a minimal loss to the enterprise, or

(C) results in pecuniary gain or other benefit to such party,

shall be subject to a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(c) THIRD TIER.—Notwithstanding subsections (a) and (b), an enterprise which, and any enterprise-affiliated party thereof who,—

(1) knowingly—

(A) commits any violation described in subsection (a),

(B) engages in any unsafe or unsound practice in conducting the affairs of an enterprise, or

(C) breaches any fiduciary duty, and

(2) knowingly or recklessly causes a substantial loss to the enterprise or a substan-

tial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach, shall be subject to a civil penalty in an amount not to exceed the applicable maximum amount determined under subsection (d) for each day during which such violation, practice, or breach continues.

(d) MAXIMUM AMOUNTS OF PENALTIES.—The maximum daily amount of any civil penalty which may be assessed pursuant to subsection (c) for any violation, practice, or breach described in such subsection is—

(1) in the case of any enterprise-affiliated party an amount not to exceed $1,000,000; and

(2) in the case of an enterprise, an amount not to exceed the lesser of—

(A) $1,000,000, or

(B) one percent of the total assets of such enterprise.

(e) ASSESSMENT.—

(1) WRITTEN NOTICE.—Any penalty imposed under this section may be assessed and collected by the Boad by written notice.

(2) FINALITY OF ASSESSMENT.—If a hearing is not timely requested pursuant to subsection (h), the penalty assessment contained in a written notice shall constitute a final and unappealable order.

(f) AUTHORITY TO MODIFY OR REMIT PENALTY.—

(1) PRIOR TO COLLECTION ACTION.—Prior to initiation of an action pursuant to subsection (i)(1), the Board may compromise, modify, or remit any penalty which is or may be assessed under this section.

(2) AFTER INITIATION OF COLLECTION ACTION.—Following the initiation of an action pursuant to subsection (i)(1), the Board may compromise, modify, or remit any penalty which is or may be assessed under this section with the prior consent of the Attorney General.

(g) MITIGATING FACTORS.—In determining the amount of any penalty under this section, the Board shall take into account the appropriateness of the penalty with respect to—

(1) the size of financial resources and good faith of the enterprise, or enterprise-affiliated party charged;

(2) the gravity of the violation;

(3) the history of previous violations; and

(4) such other matters as justice may require.

(h) HEARING.—The enterprise or enterprise-affiliated party against whom any penalty is assessed under this section shall be afforded an agency hearing if such party submits a request for hearing within 20 days after the issuance of the notice of assessment. A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to this subsection.

(i) COLLECTION.—

(1) REFERRAL.—If the enterprise or enterprise-affiliated party fails to pay a penalty that has become final, the Board shall, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, recover the amount assessed by action in the appropriate United States district court.

(2) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any action brought under paragraph (1), the validity and appropriateness of the penalty shall not be subject to review.

(j) DISBURSEMENT.—All penalties collected under authority of this section shall be deposited into the General Fund of the Treasury.

(k) REGULATIONS.—The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

**SEC. 309. NOTICE AFTER SEPARATION FROM SERVICE.**

The regulation, termination of employment or participation, or separation of an enterprise-affiliated party (including a separation caused by the closing of the enterprise) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this title against any such party if such notice is served before the end of the six-year period beginning on the date such party ceased to associate with the enterprise.

**SEC. 310. CRIMINAL PENALTY.**

Whoever, being subject to an order in effect under section 304 or 305, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in section 304(e)) in the conduct of the affairs of any institution or agency specified in section 304(f) shall be fined not more than $1,000,000, imprisoned for not more than 5 years, or both. Such fine shall be deposited in the General Fund of the Treasury.

**SEC. 311. NOTICE OF SERVICE.**

Any service required or authorized to be made by the Board under this title may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide.

**SEC. 312. SUBPOENA POWER.**

(a) POWERS.—

(1) In the course of or in connection with any administrative proceeding under this title, the Board shall have the power to—

(A) administer oaths and affirmations,

(B) take or cause to be taken depositions,

(C) issue subpoenas and subpoenas duces tecum, and

(D) revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Board.

(b) The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted.

(c) RULEMAKING AUTHORITY.—The Board is authorized to make such rules and regulations as the Board determines necessary or appropriate with respect to proceedings, claims, examinations, or investigations.

(d) ENFORCEMENT.—The Board, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, or any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith.

(e) FEES AND EXPENSES.—Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by the enterprise or enterprise-affiliated party thereof may allow to any such party such reasonable expenses and attorneys' fees as it determines just and proper; and such expenses and fees shall be paid by the enterprises or from its assets.

**SEC. 313. PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.**

(a) IN GENERAL.—The Board shall publish and make available to the public—

(1) any written agreement or other written statement for which a violation may be enforced by the Board, unless the Board, in the Board's discretion, determines that a publication would be contrary to the public interest;

(2) any final order issued with respect to any administrative enforcement proceeding initiated by the Board under this subtitle or any other provision of law; and

(3) any modification to or termination of any final order or agreement made public pursuant to this paragraph.

(b) TRANSCRIPTS OF HEARINGS.—A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5, United States Code.

(c) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Board makes a determination in writing that the publication of any final order pursuant to subsection (a) would seriously threaten the safety or soundness of the enterprise, the Board may delay the publication of such order for a reasonable time.

(d) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The Board may file any document or part thereof under seal in any administrative enforcement hearing commenced by the Board if, as determined by the Board in writing, disclosure thereof would be contrary to the public interest.

(e) RETENTION OF DOCUMENTS.—The Board shall keep and maintain a record, for not less than six years, of all documents described in subsection (a) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceedings initiated by the Board under this title or any other laws.

(f) DISCLOSURES TO CONGRESS.—No provisions of this section shall be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

## TITLE IV—CONSERVATORSHIP

**SEC. 401. APPOINTMENT OF CONSERVATOR.**

(a) APPOINTMENT.—The Board may, without notice or prior hearing, appoint a conservator, which may be the Board, to take possession and control of an enterprise whenever the Board determines—

(1) that the enterprise is not likely to pay its obligations in the normal course of business;

(2) that the enterprise is in an unsafe or unsound condition to transact business, including having substantially insufficient capital or otherwise;

(3) (A) that the enterprise has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and

(B) there is no reasonable prospect for the enterprise's capital to be replenished without Federal assistance;

(4) that there is any violation of laws, rules, or regulations, or any unsafe or unsound practice or condition which is likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the enterprise's condition;

(5) that there is concealment of books, papers, records, or assets of the enterprise, or refusal to submit books, papers, records, or affairs of the enterprise for inspection to any examiner or to any lawful agent of the Board; or

(6) that there is a willful or continuing violation of an order enforceable against the enterprise under section 306.

(b) JUDICIAL REVIEW.—

(1) IN GENERAL.—

(A) Not later than 20 days after the initial appointment of a conservator pursuant to this section, the enterprise may bring an action in the United States district court for the judicial district in which the home office of such enterprise is located, or in the United States District Court for the District of Columbia, for an order requiring the Board to terminate the appointment of the conservator.

(B) The Board's decision to appoint a conservator pursuant to this section shall be set aside only if the court finds that such decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(2) STAY.—

(A) IN GENERAL.—The conservator may request that any judicial action or proceeding to which the conservator or the enterprise is or may become a party be stayed for a period of up to 45 days after the appointment of the conservator. Upon petition, the court shall grant such stay as to all parties.

(B) BOARD OR FEDERAL AGENCY AS CONSERVATOR.—In any case in which the conservator is the Board, a Federal agency, or an employee of the Federal Government, the conservator may make a request described in paragraph (a) only with the prior consent of the Attorney General and subject to the Attorney General's direction and control.

(3) ACTIONS AND ORDERS.—

(A) LIMITATION ON REMEDIES.—Except as otherwise provided in this subsection, no court may take any action regarding the removal of a conservator, or restrain, or affect the exercise of powers or functions of, a conservator.

(B) ENFORCEMENT OF ORDERS.—The Board, with the prior consent of the Attorney General and subject to the Attorney General's direction and control, may apply to a court, which shall have the jurisdiction, to enforce an order of the Board relating to—

(i) the conservatorship and the enterprise in conservatorship; or

(ii) restraining or affecting the exercise of powers or functions of a conservator.

(c) APPOINTMENT BY CONSENT.—The Board may appoint a conservator for an enterprise if the enterprise, by an affirmative vote of a majority of its board of directors or by an affirmative vote of a majority of its shareholders, consents to such appointment.

(d) EXCLUSIVE AUTHORITY.—(1) The Board shall have exclusive power and jurisdiction to appoint a conservator for the enterprise.

(2) As a conservator, the Board shall have all the powers granted under the applicable law, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators under this title and any other provision of law.

(3) Any other person appointed as a conservator shall be subject to the provisions of this title.

(e) REPLACEMENT OF CONSERVATOR.—The Board may, without notice or hearing, replace a conservator with another conservator. Such replacement shall not affect the enterprise's right under subsection (b) to obtain judicial review of the Board's original decision to appoint a conservator.

**SEC. 402. EXAMINATIONS.**

The Board is authorized to examine and supervise any enterprise in conservatorship as long as the enterprise continues to operate as a going concern.

**SEC. 403. TERMINATION OF CONSERVATORSHIP.**

(a) GENERAL RULE.—At any time the Board becomes satisfied that it may safely be done and that it would be in the public interest, the Board may terminate the conservatorship and permit the enterprises to resume the transaction of its business subject to such terms, conditions, and limitations as the Board may prescribe.

(b) ENFORCEMENT AS FINAL CEASE-AND-DESIST ORDER.—

(1) Such terms, conditions, and limitations as may be prescribed under subsection (a) shall be enforceable under the provisions of section 307, to the same extent as an order issued pursuant to section 302 which has become final.

(2) An enterprise may bring an action in the United States district court for the judicial district in which the home office of such enterprises is located or in the United States District Court for the District of Columbia for an order requiring the Board to terminate the order.

(3) An action for judicial review of the terms, conditions, and limitations contained in any order may not be commenced later than 20 days from the date of the termination of the conservatorship or the imposition of the order, whichever is later.

**SEC. 404. CONSERVATOR; POWERS AND DUTIES.**

(a) GENERAL POWERS.—A conservator shall have all the powers of the shareholders, directors, and officers of the enterprises and may not operate the enterprises in its own name unless the Board, in the order of appointment, limits the conservator's authority.

(b) SUBJECT TO RULES OF BOARD.—Any conservator shall be subject to such rules, regulations, and orders as the Board from time to time deems appropriate and, except as otherwise specifically provided in such rules, regulations, or orders or in section 405, shall have the same rights and privileges and be subject to the same duties, restrictions, penalties, conditions, and limitations as apply to directors, officers, or employees of the enterprise.

(c) PAYMENT OF CREDITORS.—The Board may require the conservator to set aside and make available for payment to creditors such amounts as in the opinion of the Board may safely be used for that purpose. All creditors who are similarly situated shall be treated in the same manner.

(d) COMPENSATION OF CONSERVATOR AND EMPLOYEES.—Any conservator (other than the Board) and professional employees (other than Federal employees) appointed to represent or assist the conservator shall not be paid amounts greater than are payable to employees of the Federal Government for similar services, except that the Board may authorize payment at higher rates (but not in excess of rates prevailing in the private sector), if the Board determines that paying such higher rates is necessary in order to recruit and retain competent personnel.

(e) EXPENSES.—All expenses of any such conservatorship shall be paid by the enterprise and shall be a lien upon the enterprise which shall have priority over any other lien.

**SEC. 405. LIABILITY PROTECTION.**

(a) FEDERAL AGENCY AND EMPLOYEES.—In any case in which the conservator is the Board, a Federal agency, or an employee of the Federal Government, the provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to such conservator's liability for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

(b) OTHER CONSERVATORS.—In any case where the conservator is not a conservator described in subsection (a), the conservator shall not be liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence, including any similar conduct or any form of intentional tortious conduct, as determined by a court.

(c) INDEMNIFICATION.—The Board, with the approval of the Attorney General, shall have authority to idemnify the conservator on such terms as the Board deems proper.

**SEC. 406. POWERS OF OFFICERS NOT AFFECTED.**

Nothing in this title shall be construed to impair in any manner any power of the President, the Secretary of the Treasury, the Board, or the Attorney General.

**SEC. 407. RULES AND REGULATIONS.**

The Board may prescribe such rules and regulations as the Board may determine necessary to carry out the provisions of this title.

## TITLE V. REGULATORY RESTRUCTURING AND CONFORMING AMENDMENTS

### SUBTITLE A. FARM CREDIT ADMINISTRATION ABOLISHED

**SEC. 501. FARM CREDIT ADMINISTRATION AND FARM CREDIT ADMINISTRATION BOARD TERMINATED.**

(a) FARM CREDIT ADMINISTRATION AND FARM CREDIT ADMINISTRATION BOARD TERMINATED.—Effective January 1, 1993, the Farm Credit Administration and the Farm Credit Administration Board are terminated.

(b) TRANSFER OF POWERS TO FEDERAL ENTERPRISE REGULATORY BOARD.—Effective January 1, 1993, all powers and duties which were vested in the Farm Credit Administration Board or the Farm Credit Administration on December 31, 1992, are transferred to the Board, except as otherwise provided in this Act.

(c) DISPOSITION OF AFFAIRS.

(1) IN GENERAL.—In winding up the affairs of the Farm Credit Administration and the Farm Credit Administration Board, the Chairman of the Farm Credit Administration Board shall consult and cooperate with the Chairperson of the Board to facilitate the orderly transfer of functions to the Board. Any matter not resolved pursuant to such consultation and cooperation shall be resolved by the Chairperson of the Board.

(2) CONTINUING AUTHORITY OF THE FARM CREDIT ADMINISTRATION BOARD.—Except as provided in paragraph (1), nothing in this Act shall affect the authority vested in the Farm Credit Administration Board before Janurary 1, 1993.

(3) CONTINUATION OF AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, or any successor thereto, which was providing support services to the Farm Credit Administration or the Farm Credit Administration Board on the day before the date the Farm Credit Administration or Farm Credit Administration Board were abolished shall—

(A) continue to provide such services, on a reimbursable basis, in accordance with the terms of the arrangement pursuant to which such services were provided until modified or terminated in accordance with such terms, except that effective January 1, 1993, the Board shall substitute for the Farm Credit Administration or Farm Credit Administration Board as a party to the arrangement; and

(B) consult with the Chairperson to coordinate and facilitate a prompt and reasonable transition.

(d) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—No provision of this title shall affect the validity of any right, duty, or obligation of the United States, the Farm Credit Administration Board or any person, which existed on the day before the date upon which the Farm Credit Administration and the Farm Credit Administration Board are abolished by this title.

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Farm Credit Administration Board or the Farm Credit Administration shall abate by reason of enactment of this Act, except that effective January 1, 1993, the Board shall be substituted as a party to any such action or proceeding.

(3) CONTINUATION OF RULES.—All orders, resolutions, determinations, regulations, interpretative rules, other interpretations, guidelines, procedures and other advisory materials which—

(A) have been issued, made, prescribed, or permitted to become effective by the Farm Credit Administration Board; and

(B) are in effect on December 31, 1992, or become effective thereafter,

shall continue in effect according to the terms of such orders, resolutions, determinations, regulations, interpretative rules, guidelines, procedures or other advisory material; and shall be administered by the Board and shall be enforceable by or against the Board until modified, terminated, set aside, or superseded in accordance with applicable law by the Board, by any court of competent jurisdiction, or by operation of law.

(4) STATUS OF RULES.—

(A) Any proposed regulation or rule of the Farm Credit Administration Board or Farm Credit Administration which has not been published as a final regulation by the date that the Farm Credit Administration Board and Farm Credit Administration are terminated shall be deemed to be a proposed regulation or rule of the Board.

(B) Any final or interim rule published by the Farm Credit Administration Board or the Farm Credit Administration prior to January 1, 1993, but which shall not become efective prior to such date, shall become effective according to its terms.

(5) APPLICATION.—The provisions of this subsection shall apply except as otherwise expressly provided in this Act.

(e) TRANSFER OF EMPLOYEES.—

(1) IN GENERAL.—All employees of the Farm Credit Administation on the day before that agency is terminated under this Act shall be transferred to the Board.

(2) RIGHTS OF TRANSFERRED EMPLOYEES.—All employees transferred pursuant to paragraph (1) shall be entitled to the following rights:

(A) TRANSFER OF FUNCTION.—Notwithstanding any other provision of law, section 3503 of title 5, United States Code, shall be applicable to each such transfer.

(B) TRANSFERRED POSITION.—Each transferred employee shall be guaranteed a position with the same status and tenure as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade for one year after the date of transfer, except for cause. Nothing in this section shall be construed to limit the right of the Chairperson of the Board to terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character.

(C) COMPENSATION.—Each employee transferred under this section shall be entitled to receive, during the one-year period immediately following the transfer, the same compensation that employee received immediately preceding the transfer. This paragraph shall only apply to a transferred employee while such employee remains with the Board.

(D) BENEFITS.—

(i) Each employee transferred under this section may retain for one year after the date such transfer occurs, membership in any employee benefit program of the Farm Credit Administration, other than a retirement program but including insurance, to which such employee belongs to the day immediately preceding the transfer if—

(I) the employee does not elect to give up the benefit or membership in the program; and

(II) the benefit or program is continued by the Chairperson.

(ii) The excess of the costs of the benefits provided by this section over the costs of benefits which would have been provided by the Board shall be paid by the Board.

(iii) If an employee elects not to participate in a health or life insurance program or the health or life insurance program is not continued by the Chairperson, such employee may elect to participate in the Board's health or life insurance programs notwithstanding health conditions pre-existing at the time of election or enrollment and without regard to any other regularly scheduled open season. Such election shall be made within 120 days of the transfer or discontinuation of the program.

(3) REORGANIZATION OF THE FARM CREDIT ADMINISTRATION.—If the Chairperson determines, not less than one year nor more than three years after the date the functions of the Farm Credit Administration are transferred to the Board, that a reorganization of the combined work force is required, that reorganization shall be deemed a "major reorganization" for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code. The provisions of chapter 35 of title 5, United States Code, shall govern any reduction in force resulting from such a reorganization.

(f) TRANSFER OF PROPERTY.—Effective January 1, 1993, all property of the Farm Credit Administration and Farm Credit Administration Board shall be transferred to the Board.

(g) AMENDMENTS TO THE FARM CREDIT ACT OF 1971.—The Farm Credit Act of 1971 (12 U.S.C. 2160 et seq.) is amended—

(1) by striking "Farm Credit Administration" and "Administration" in each place such terms appear and inserting in each such place "Farm Credit System Division of the Federal Enterprise Regulatory Board";

(2) by striking "Farm Credit Administration Board" each place it appears and inserting in each such place "Federal Enterprise Regulatory Board";

(3) by striking out section 5.7 (12 U.S.C. 2241);

(4) by amending section 5.8 (12 U.S.C. 2242) to read as follows—

SEC. 5.8. THE FARM CREDIT SYSTEM DIVISION OF THE FEDERAL ENTERPRISE REGULATORY BOARD.—The management fo the Farm Credit System Division of the Federal Enterprise Regulatory Board shall be vested in the Federal Enterprise Regulatory Board (referred to in this Act as the "Board"). Any function vested in the Farm Credit System Division by this Act or any other law may be performed by the Board or by any representative of the Board.";

(5) by striking "Chairman" each place it appears and inserting in each such place "Chairperson"; and

(6) by amending section 5.11(d) (12 U.S.C. 2245(d) to read as follows—

"(d) FUNDING.—

The operations of the Farm Credit System Division of the Board shall be funded and paid for from the fund created by Section 5.15 of this title.";

(7) by inserting after the word "Corporation" and before the semicolon in section 8.3(b)(1)(A)(12 U.S.C. 2279aa-3 (b)(1)(A)) the following:

", unless inconsistent with any rule, regulation or policy of the Federal Enterprise Regulatory Board";

(8) by inserting after the word "adopt" and before the word "appropriate" in the first sentence of section 8.6(e) (12 U.S.C. 2279aa-6(c)) the following:

"to the extent not inconsistent with any rule, regulation or policy of the Federal Enterprise Regulatory Board";

(9) by inserting after the word "establish" and before the word "such" in the first sentence of section 8.7(d) (12 U.S.C. 2279aa-7(d)) the following: ", to the extent not inconsistent with any rule, regulation or policy of the Federal Enterprise Regulatory Board";

(10) by striking section 8.11(a) (12 U.S.C. 2279aa-11(a));

(11) by striking "Farm Credit Administration" both places that it appears in section 8.11(c) (12 U.S.C. 2279aa-11(c)) and inserting instead "Federal Enterprise Regulatory Board";

(12) by redesignating sections 8.11 (b) and (c) (12 U.S.C. 2279aa-11 (a) and (c)) as sections 8.11 (a) and (b), respectively; and

(13) by striking section 8.11(d) (12 U.S.C. 2279aa-11(d)).

(h) EFFECTIVE DATE.—The amendments described in subsection (g) shall become effective on January 1, 1993.

Subtitle B. Reorganization of Federal Home Loan Banks

**SEC. 511. REORGANIZATION OF FEDERAL HOME LOAN BANKS.**

(a) FEDERAL HOUSING FINANCE BOARD TERMINATED. Effective January 1, 1993, the Federal Housing Finance Board is abolished.

(b) TRANSFER OF POWERS TO FEDERAL ENTERPRISE REGULATORY BOARD; EFFECTIVE DATES.—

(1) TRANSFER OF POWERS.—Effective January 1, 1993, all powers and duties which were vested in the Federal Housing Finance Board on December 31, 1992, are transferred to the Board, except as otherwise provided in this Act.

EFFECTIVE DATE OF ACT'S PROVISIONS.—Effective January 1, 1993, each Federal Home Loan Bank shall be subject to the provisions of this Act that apply to an enterprise and to implementing regulations issued by the Board.

(c) DISPOSITION OF AFFAIRS.—

(1) IN GENERAL.—In administering the termination of the Federal Housing Finance Board, the Chairperson of the Federal Housing Finance Board shall consult and cooperate with the Chairperson of the Board to facilitate the orderly transfer of functions to the Board. Any matter not resolved pursuant to such consultation and cooperation shall be resolved by the Chairperson of the Board.

(2) CONTINUING AUTHORITY OF THE FEDERAL HOUSING FINANCE BOARD.—Except as provided in paragraph (1), nothing in this Act shall affect the authority vested in the Federal Housing Finance Board before January 1, 1993.

(3) CONTINUATION OF AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, or any successor thereto, which was providing support services to the Federal Housing Finance Board on the day before the date the Federal Housing Finance Board was terminated shall—

(A) continue to provide such services, on a reimbursable basis, in accordance with the terms of the arrangement pursuant to which such services were provided until modified or terminated in accordance with such terms, except that effective January 1, 1993, the Board shall substitute for the Federal Housing Finance Board as a party to the arrangement; and

(B) consult with the Chairperson to coordinate and facilitate a prompt and reasonable transition.

(d) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—No provision of this title shall affect the validity of any right, duty, or obligation of the United States, the Federal Housing Finance Board or any person, which existed on the day before the date upon which the Federal Housing Finance Board is terminated under this title.

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Federal Housing Finance Board shall abate by reason of enactment of this Act, except that effective January 1, 1993, the Board shall be substituted as a party to any such action or proceeding.

(3) CONTINUATION OF RULES.—All orders, resolutions, determinations, regulations, interpretative rules, other interpretations, guidelines, procedures and other advisory material which—

(A) have been issued, made, prescribed, or permitted to become effective by the Federal Housing Finance Board; and

(B) are in effect on December 31, 1992, or become effective thereafter,

shall continue in effect according to the terms of such orders, resolutions, determinations, regulations, interpretative rules, guidelines, procedures or other advisory material; shall be administered by the Board; and shall be enforceable by or against the Board until modified, terminated, set aside, or superseded in accordance with applicable law by the Board, by any court of competent jurisdiction, or by operation of law.

(4) STATUS OF RULES.—

(A) Any proposed regulation or rule of the Federal Housing Finance Board which has not been published as a final regulation by the date that the Federal Housing Finance Board is abolished shall be deemed to be a proposed regulation or rule of the Board.

(B) Any final or interim rule published by the Federal Housing Finance Board prior to January 1, 1993, but which shall not become effective prior to such date, shall become effective according to its terms.

(5) APPLICATION.—The provisions of this subsection shall apply except as otherwise expressly provided in this Act.

(e) TRANSFER OF EMPLOYEES.—

(1) IN GENERAL.—All employees of the Federal Housing Finance Board on the day before that agency is abolished by this Act shall be transferred to the Board.

(2) RIGHTS OF TRANSFERRED EMPLOYEES.—All employees transferred pursuant to paragraph (1) shall be entitled to the following rights:

(A) TRANSFER OF FUNCTION.—Notwithstanding any other provision of law, section 3503 of title 5, United States Code, shall be applicable to each such transfer.

(B) TRANSFERRED POSITION.—Each transferred employee shall be guaranteed a position with the same status and tenure as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade for one year after the date of transfer, except for cause. Nothing in this section shall be construed to limit the right of the Chairperson of the Board to terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character.

(C) COMPENSATION.—Each employee transferred under this section shall be entitled to receive, during the one-year period immediately following the transfer, the same compensation that employee received immediately preceding the transfer. This paragraph shall only apply to a transferred employee while such employee remains with the Board.

(D) BENEFITS.—

(i) Each employee transferred under this section may retain for one year after the date such transfer occurs, membership in any employee benefit program of the Federal Housing Finance Board, other than a retirement program but including insurance, to which such employee belongs on the day immediately preceding the transfer if—

(I) the employee does not elect to give up the benefit or membership in the program; and

(II) the benefit or program is continued by the Chairperson.

(ii) The difference in the costs between the benefits which would have been provided by the Federal Housing Finance Board and those provided by this section shall be paid by the Board.

(iii) If any employee elects not to participate in a health or life insurance program, or the health or life insurance program is not continued by the Chairperson, such employee may elect to participate in the Board's health or life insurance programs notwithstanding health conditions pre-existing at the time of election or enrollment and without regard to any other regularly scheduled open season. Such election shall be made within 120 days of the transfer or discontinuation of the program.

(3) REORGANIZATION OF THE FEDERAL HOUSING FINANCE BOARD.—If the Chairperson determines, not less than one year nor more than three years after the date the functions of the Federal Housing Finance Board are transferred to the Board, that a reorganization of the combined work force is required, that reorganization shall be deemed a "major reorganization" for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code. The provisions of chapter 35 of title 5, United States Code, shall govern any reduction in force resulting from such a reorganization.

(f) TRANSFER OF PROPERTY.—Effective January 1, 1993, all property of the Federal Housing Finance Board shall be transferred to the Board.

(g) AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT.—The Federal Home Loan Bank Act (12 U.S.C. 1421 *et seq.*) is amended—

(1) by striking the section (2)(1) (12 U.S.C. 1422(1)) and inserting in lieu thereof the following—

"(2)(1) BOARD.—The term 'Board' means the Federal Enterprise Regulatory Board";

(2) by striking section 2A (12 U.S.C. 1422a);

(3) by striking section 2B(c) (12 U.S.C. 1422b(c)) and redesignating section 2B(d) (12 U.S.C. 1422b(d)) as section 2B(c);

(4) by striking the second sentence of section 10(c) (12 U.S.C. 1430(c)); and

(5) by striking section 18(b) (12 U.S.C. 1438(b)) and redesignating section 18(c) (12 U.S.C. 1438(c)) as 18(b).

(h) EFFECTIVE DATE.—All provisions of subsection (g) except for paragraph (4) shall become effective January 1, 1993. The provisions of paragraph (4) shall become effective January 1, 1995.

Subtitle C. Amendments to Related Acts

**SEC. 521. AMENDMENTS TO FEDERAL NATIONAL MORTGAGE ASSOCIATION ACT.**

(a) Section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)) is amended by striking "Secretary of Housing and Urban Development" each place it appears and inserting in such place "the Federal Enterprise Regulatory Board".

(b) Section 303 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1718) is amended by striking "Secretary of Housing and Urban Development" each place it appears and inserting in each such place "Federal Enterprise Regulatory Board".

(c) Section 304(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(b)) is amended—

(1) in the first sentence, by striking the semicolon and all that follows through "Secretary of Housing and Urban Development";

(2) by striking the second sentence;

(3) in the first sentence, by inserting "and notification of the Federal Enterprise Regulatory Board" after "the Secretary of the Treasury" both times it appears; and

(4) by inserting after the first sentence the following new sentence: "Any obligation that the corporation has issued or is issuing as of the date of enactment of the Federal Enterprise Regulatory Act of 1991, or any obligation of a substantially identical type, shall be deemed to have been approved by the Federal Enterprise Regulatory Board."

(d) Section 304(d) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(d)) is amended by inserting after the first time the word "upon" appears and before the word "approval" in the first sentence the following: "notification to the Federal Enterprise Regulatory Board and".

(e) Section 304(e) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(e)) is amended by inserting after the word "upon" and before the word "the" in the first sentence the following: "notification to the Federal Enterprise Regulatory Board and".

(f) Section 309(h) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(h)) is amended by striking "Secretary of Housing and Urban Development" and "Secretary" and inserting instead "Federal Enterprise Regulatory Board".

(g) Section 311 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723c) is amended by striking "Secretary of Housing and Urban Development" and inserting instead "Federal Enterprise Regulatory Board".

(h) Section 317 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723i) is amended by striking "Secretary of Housing and Urban Development" or "Secretary" each place it appears and inserting in each suchplace "Federal Enterprise Regulatory Board."

(i) EFFECTIVE DATE.—

(1) The provisions of subsections (a) through (i) shall become effective on January 1, 1992, unless otherwise provided in this subsection.

(2) The provisions of paragraphs (1) and (2) of subsection (c) shall become effective January 1, 1995.

(j) TRANSITIONAL PROVISION.—Any rules or regulations issued by the Secretary of Housing and Urban Development or the Secretary of the Treasury pursuant to the provisions of the Federal National Mortgage Association Charter Act shall be effective and enforceable by the Secretary of Housing and Urban Development or the Secretary of the Treasury, respectively, to the extent that such rules and regulations are not inconsistent with the authorities and duties of the Federal Enterprise Regulatory Board.

**SEC. 522. AMENDMENTS TO THE FEDERAL HOME LOAN MORTGAGE CORPORATION ACT.**

(a) Section 303(b) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(b)) is amended—

(1) by striking "Secretary of Housing and Urban Development" each place it appears and inserting in each such place "Federal Enterprise Regulatory Board";

(2) by striking paragraph (5) and redesignating paragraphs (6), (7) and (8) as (5), (6) and (7), respectively.

(b) Section 306(j) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455(j)) is amended—

(1) in paragraph (1), by inserting after the word "upon" and before the word "the" the following: "notification to the Federal Enterprise Regulatory Board and".

(2) by inserting after paragraph (3) the following new paragraph:

"(4) Any notes, debentures, or other unsecured obligations of the Corporation that the Corporation has issued or is issuing as of the date of enactment of the Federal Enterprise Regulatory Act of 1991, or any obligation of a substantially identical type, shall be deemed to have been approved by the Federal Enterprise Regulatory Board".

(c) EFFECTIVE DATE.—The amendments described in subsection (a)(1), and the provisions of subsection (b), shall become effective on January 1, 1992. The amendment in subsection (a)(2), that strikes paragraph (5) shall become effective January 1, 1995.

(d) TRANSITIONAL PROVISION.—Any rules or regulations issued by the Secretary of Housing and Urban Development pursuant to the provisions of the Federal Home Loan Mortgage Corporation Act shall be effective and enforceable by the Secretary of Housing and Urban Development to the extent that such rules and regulations are not inconsistent with the authorities and duties of the Federal Enterprise Regulatory Board.

**SEC. 523. AMENDMENT TO HIGHER EDUCATION ACT OF 1965.**

(a) Section 439(c)(6) of the Higher Education Act of 1965 (20 U.S.C. 1087-2(c)(6)) is amended by inserting the following after the word "Association" and before the period in the second sentence: ", unless inconsistent with any rule, regulation or policy of the Federal Enterprise Regulatory Board."

(b) Section 439(h) of the Higher Education Act of 1965 (20 U.S.C. 1087-2(h)) is amended by striking "with the approval of the Secretary of Education and" and inserting instead "upon notification of the Federal Enterprise Regulatory Board and approval by".

(c) Sections 439 (j) and (k) of the Higher Education Act of 1965 (20 U.S.C. 1087-2 (j) and (k)) are amended by striking "Secretary of the Treasury" each place it appears and inserting in each such place "Federal Enterprise Regulatory Board".

TITLE VI—MISCELLANEOUS PROVISIONS

**SEC. 601. COMPTROLLER GENERAL AUDIT AND ACCESS TO RECORDS.**

(a) AUDITS AND EVALUATIONS BY THE COMPTROLLER GENERAL.—

(1) AUDITS AND EVALUATIONS OF ENTERPRISES AND THE REGULATORY BOARD.—The Federal Enterprise Regulatory Board, all enterprises as defined in section 102 of this Act, all institutions chartered under the Farm Credit Act of 1971, and all other entities subject to the provisions of or amendments made by this Act, shall be subject to audit and evaluation by the Comptroller General of the United States.

(2) AUDIT AND EVALUATION OF PERSONS PROVIDING CERTAIN GOODS OR SERVICES.—All persons and organizations which, by contract, grant, or otherwise, provide goods or services to the Federal Enterprise Regulatory Board, any enterprise as defined in section 102 of this Act, any institution chartered under the Farm Credit Act of 1971, or any other entity referred to in paragraph (1), shall be subject to audit and evaluation by the Comptroller General with respect to such provision of goods or services.

(b) PROVISIONS APPLICABLE TO AUDITS AND EVALUATIONS UNDER THIS SECTION.—

(1) The Comptroller General shall determine the nature, scope, and terms and conditions of audits and evaluations conducted under this section.

(2) COORDINATION WITH OTHER PROVISIONS OF LAW.—The authority of the Comptroller General under this section shall be in addition to any audit or evaluation authority available to the Comptroller General under other provisions of this Act or any other law.

(3) RIGHTS OF ACCESS, EXAMINATION, AND COPYING.—The Comptroller General, and any duly authorized representative of the Comptroller General, shall have access to, and the right to examine and copy, all records and other recorded information in any form, and to examine any property, within the possession or control of any entity or person which is subject to audit under this section which the Comptroller General determines relevant to an audit or evaluation conducted under this section.

(4) ENFORCEMENT OF ACCESS RIGHTS.—The Comptroller General's right of access to information under this section shall be enforceable pursuant to section 716 of title 31, United States Code.

(5) MAINTENANCE OF CONFIDENTIAL RECORDS.—The provisions of section 716(e) of title 31, United States Code, shall apply to information obtained by the Comptroller General under this section.

**SEC. 602. INCONSISTENT PROVISIONS.**

All provisions of law inconsistent with any provision of this Act are hereby superseded to the extent of the inconsistency.

**SEC. 603. EFFECTIVE DATE.**

Unless otherwise provided by this Act, the provisions of this Act shall be effective on and after January 1, 1992.●

● Mr. GLENN. Mr. President, I rise today in support of Senator KOHL's legislation to create an independent regulatory board to supervise Government-sponsored enterprises. I am pleased to be an original cosponsor of this important reform.

One trillion of the $6 trillion in outstanding, contingent Federal liabilities is held by GSE's. They are and should be a cause of great concern.

Recently, the Government Information and Regulation Subcommittee of the Governmental Affairs Committee held a hearing on the condition of GSE's. The creation and operation of these entities raise the kind of organizational issues that the committee has historically been concerned with. These entities are federally chartered, but privately run; they have a line of credit with the Treasury, but the shares of some are traded on the New York Stock Exchange; their boards include private citizens and public officials; some do not pay State corporate income tax, yet, word has it, GSE employees often travel on Government rates.

They are a real hybrid—a weird permutation on the everyday, run-of-the-mill Government agency. The committee should be interested in GSE's—if for no other reason than the generic government organizational issues that they raise.

But there are other important reasons to be concerned. Because of their vague association with the U.S. Government, the financial markets assume that the full faith and credit of the Treasury stands behind their obligations.

There are no such explicit guarantees. It doesn't matter. It is generally accepted by GAO, the Treasury Department, and the CBO that should any of the GSE's face financial ruin, the pressure on the U.S. Government for a taxpayer bailout would be enormous.

GSE securities are held by a large number of banks, insurance companies, and international financial institutions; this means that a GSE failure would have a cascading effect on their financial viability, something Congress might try to avoid. The same rationale for the "too big to fail" bailout of Chrysler, which, mind you, had absolutely no Government connection, would come into play.

Therefore, all three—the administration, GAO, and the CBO—agree that GSE's must be better regulated.

I believe the best proposal on the table is GAO's recommendation for an independent regulatory board consisting of a chairperson, the Federal Reserve Chairman, and the Treasury Secretary. The chairperson would be appointed by the President and confirmed by the Senate; he or she would run the agency on a day-to-day basis. There would be three nonvoting members—the Secretaries of Education, HUD, and Agriculture. The board would have the full panoply of regulatory and enforcement powers.

With its august membership, this board would be able to stand up to industry pressure and stand up for the American taxpayers, whose dollars are ultimately at risk should a GSE fail. And with its nonvoting membership, the board would be sensitive to the public policy mission of the GSE's.

In conclusion, I applaud Senator KOHL for his leadership on this issue. I also want to tell my colleagues on the Banking Committee that Senator KOHL, Senator LEVIN, and I want to work with you, and not against you, on strengthening the regulation of GSE's.

Let's work together to create an effective regulatory structure. I urge my colleagues to cosponsor this bill.●

● Mr. LEVIN. Mr. President, the bill Senator KOHL is introducing today addresses a significant area of financial risk for Federal taxpayers, an area which has gone too long without strong oversight and regulation.

Government-sponsored enterprises or GSE's, like Fannie Mae, Freddie Mac, and Sallie Mae, now have over $1 trillion in financial obligations. They also enjoy an implicit Federal guarantee of their solvency, because they help us address real public concerns such as the availability of low-cost loans for middle Americans to purchase a home, maintain a farm, and send a child to college.

This implicit guarantee also poses real financial risks to Federal taxpayers. The proof is the 1987 legislation which provided a $4 billion line of Federal credit to return an ailing Farm Credit System to economic health. That bailout was necessary to ensure the availability of credit for the Nation's farmers. It also taught us a lesson—that to protect the Federal taxpayer, we need to act now to ensure the safety and soundness of our GSE's.

That is the purpose of the Federal Enterprise Regulatory Act—to strengthen Federal controls over GSE's to ensure they are operated in a safe and sound manner.

I am not saying that the GSE's are now in fiscal trouble. They are not. In fact, they are operating about as profitably as they have in some time. But profits aren't the only measure of the need for oversight.

Let me describe just one example. In January of this year, the head of Fannie Mae, Mr. David Maxwell, decided to leave his post and return to the private sector. During his 10-year tenure, he apparently did a wonderful job at Fannie Mae, turning a $1 million per day loss into a $4 million per day profit. Fannie Mae quite properly wanted to show its appreciation.

But Fannie Mae did more than that. It paid Mr. Maxwell a whopping $7.5 million in 1990—the most any GSE has ever paid—and it gave him a lump-sum payment of pension benefits worth $19.5 million.

That means Mr. Maxwell walked away from Fannie Mae with $27 million; $27 million. That payout shot him to the top tier of corporate payouts in the whole United States.

And while that compensation was astronomical by any GSE standards, it was not the only multi-million-dollar payout. On July 15, 1991, the Washington Post business section included a report on the highest paid corporate executives in the area. It included a chart entitled, "The Millionaires' Club: Local Executives Who Had More Than $1 Million in Total Compensation in 1990."

Out of the 30 individuals listed on that chart, 6 were from GSE's. That means 6 out of 30, or 20 percent, of Washington's best-paid executives work at a GSE whose solvency is backed by the Federal Government.

Only one other financial institution made the Washington Post's millionaires' chart. Why? Because Federal regulators overseeing federally insured banks and S&L's don't permit those sky-high salaries. The relevant S&L regulation states that "compensation to officers, directors and employees shall not be in excess of that which is reasonable and commensurate with their duties and responsibilities." Federal regulators actively monitor compensation levels and put a stop to abuses by bank and S&L insiders, because as the S&L bailout has shown all too painfully, taxpayer dollars are at risk.

The same type of oversight ought to apply to GSE's, but right now it doesn't. No Federal agency can force Fannie Mae to stop insider compensation abuses, because no one now has the statutory authority to do so.

The Federal Enterprise Regulatory Act would change that. Using the same standards that apply to S&Ls, the bill would prohibit unreasonable salaries, employment contracts that threaten the safety and soundness of an institution, and pension plans with unreasonable costs. This type of authority is critical to stopping $27 million payouts and knocking some sense into GSE's whose success lies so heavily on the taxpayer's shoulders.

The bill would also authorize Federal regulations to limit risky transactions, require minimum capital standards, and address a host of other issues essential to the safe and sound operation of a GSE. To enforce these regulations, the bill would establish an independent regulatory board modeled on a General Accounting Office recommendation to create a single Federal regulator for all GSE's. This approach is in contrast to the administration's proposal to divide up responsibilities for existing GSE's among the agencies who operate in the same public policy areas, such as HUD, the Department of Agriculture, and the Department of Education.

The bill takes the GAO approach instead, with one purpose in mind: to provide tough fiscal oversight. There is at least an appearance of a conflict of interest when an agency such as HUD regulates a GSE like Fannie Mae and, at the same time, may want that GSE to take certain actions. An independent agency does not have that ongoing relationship and can better concentrate on minimizing the risk to Federal taxpayers. At the same time, using a board format allows the regulator to draw on the expertise of the Federal Reserve System, the Treasury Department, and the agencies with policy expertise.

This bill is not perfect. There may be ways to toughen it even further, and I hope the Banking Committee will examine the bill with that purpose in mind so that the Senate can vote on legislation with the toughest measures possible.

GSE's perform critical public policy roles, but they also impose very real and very serious financial risks on Federal taxpayers. I agree with Senator KOHL that, for once, Congress needs to fix a roof while the sun is shining—build a tough oversight program, while our GSE's are enjoying good health.

I commend Senator KOHL for his leadership in this area and for accommodating my concern for strong compensation oversight at the GSE's. I urge my colleagues to join Senator KOHL, Senator GLENN, and myself in working for the passage of legislation this year to strengthen Federal control of our GSE's.●

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By Mr. KENNEDY (for himself and Mr. METZENBAUM):

S. 1622. A bill to amend the Occupational Safety and Health Act of 1970 to improve the provisions of such act with respect to the health and safety of employees, and for other purposes; to the Committee on Labor and Human Resources.

COMPREHENSIVE OCCUPATIONAL SAFETY AND HEALTH REFORM ACT

Mr. KENNEDY. Mr. President, 20 years ago, Congress enacted the Occupational Safety and Health Act because an unconscionable number of workers were being killed, injured, or made ill as a result of workplace conditions. The act represented a promise by the Government to millions of working men and women that we as a country were prepared to take the steps necessary to "assure so far as possible" a safe and healthful workplace for every working American.

Since then, significant strides have been made in reducing the rate of fatalities from workplace injuries. But more than 10,000 workers still die every year from injuries sustained on the job, and as many as 100,000 die of occupational disease. The percentage of annual workdays lost because of workplace injuries has actually increased since the early 1970's. The stark fact is that as a nation, we continue to pay for the goods we consume and the services we use with the health and the lives of the workers who produce them.

As one of the sponsors of the 1970 legislation which created the Occupational Safety and Health Administration, I believed then and I continue to believe that a decent society should not tolerate that kind of human suffering and tragedy. That is why I am introducing today, with my distinguished colleague from Ohio [Mr. METZENBAUM], the Comprehensive Occupational Safety and Health Reform Act to update and strengthen the 1970 law.

When that law originally was enacted, it was a landmark measure—the first comprehensive, nationwide program to prevent workplace injuries and illnesses. But since that time, America has changed, and so have the jobs that Americans do. We have also learned a great deal that we didn't know in 1970, about the nature and causes of occupational injury and disease, and about what needs to be done to more effectively identify and address workplace safety and health hazards.

The legislation we are introducing today is intended to address many of the weaknesses in the current law which have been identified in studies by the General Accounting Office, the Office of Technology Assessment, and the Administrative Conference, and in oversight hearings conducted by the Committee on Labor and Human Resources in 1988.

As described more fully in the section-by-section analysis, the bill includes provisions to streamline and expedite the standard-setting process, to require better targeting of limited resources to high-risk workplaces, to speed up and improve the hazard abatement process, to strengthen criminal penalties for the most egregious violations of the act, and to expand coverage of the act to Federal, State, and local government employees.

Of particular significance are new provisions to shift the focus of the act from one which relies on inspections and the threat of civil fines to bring about compliance with workplace safety and health standards, to one which recognizes that the objectives of the act can never be fully achieved unless employers and employees take an active role in working cooperatively to identify workplace hazards and take corrective action before injuries or illnesses occur.

To encourage that kind of active involvement, our bill includes provisions that would significantly increase employer and employee involvement in two ways.

First, it would require employers to develop written safety and health programs identifying and addressing safety and health hazards in the workplace, and providing for employee education and training regarding those hazards. Second, it would require joint employer-employee safety and health committees to be established at worksites with 11 or more employees. The committees would have the authority to review the employer's injury and illness records, investigate employee complaints of safety and health hazards, conduct regular inspections of the workplace, and make advisory recommendations to correct hazards or alleviate unhealthy working conditions.

Two States—Oregon and Washington—already have statutes requiring workplace health and safety committees. They are required in several Canadian provinces, and in many European countries including Germany and Sweden. They also exist in various forms in many nonunion and union firms in this country. California has recently enacted legislation requiring employers to have safety and health programs.

The proposals are based on two important concepts: employee empowerment and a workplace approach to occupational safety and health. They reflect a reasonable and realistic approach to the problems we face in trying to improve workplace safety and health in an era of limited government resources.

Work-related injuries and illnesses are not just a public health issue; they are also an economic issue. A recent study by the Rand Institute for Civil Justice found that in 1989, work-related injuries cost the Nation $83 billion, or nearly 2 percent of GNP—$31 billion in medical and other direct costs, and a whopping $52 billion in lost work time. At a time when the Nation's health care system is in crisis, and when American business is under intense competitive pressure from abroad, those figures are cause for serious concern.

Above all, it is the human costs that should give us pause, costs that are measured not in numbers, but in shattered families and broken lives—in blood that is shed, bodies that are mangled, and lungs that are destroyed.

With the introduction of this legislation, we take a major new step toward fulfillment of the promise we made 20 years ago—of a safe and healthful workplace for every working American.

I urge my colleagues to cosponsor this legislation and I ask unanimous consent that a section-by-section analysis and the text of the bill be printed in the RECORD.

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

S. 1622

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Comprehensive Occupational Safety and Health Reform Act".

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds that—

(1) during the past two decades progress has been made in reducing workplace fatalities, injuries and exposures to toxic substances through efforts of the Federal agencies, States, employers, employees and employee representatives;

(2) despite the progress described in paragraph (1), work-related injuries, illnesses and fatalities continue to occur at rates that are unacceptable and that impose a substantial burden upon employers, employees and the nation in terms of lost production, wage loss, medical expenses, compensation payments and disability;

(3) employers and employees are not sufficiently involved in joint efforts to identify and correct occupational safety and health hazards;

(4) employers and employees require better training to identify safety and health problems;

(5) Federal agency standard-setting has not kept pace with knowledge about safety and health hazards;

(6) enforcement of occupational safety and health standards has not been adequate to bring about timely abatement of hazardous conditions or to deter future violation of occupational health and safety standards;

(7) millions of American workers exposed to serious occupational safety and health hazards are excluded from full coverage under the Occupational Safety and Health Act of 1970; and

(8) the lack of accurate data and information on work related fatalities, injuries and illnesses has impeded efforts to prevent such fatalities, injuries and illnesses.

(b) PURPOSE.—It is the purpose of this Act to—

(1) increase the joint participation of employers and employees in identifying and correcting occupational safety and health hazards, by requiring the establishment of employer safety and health programs, joint employer-employee safety and health committees, and training and education programs;

(2) improve and expedite the setting of occupational safety and health standards;

(3) strengthen Federal and State agency enforcement of violations of safety and health standards;

(4) assure that all employees are afforded full coverage and protection from safety and health hazards under the Occupational Safety and Health Act of 1970 or other Federal laws; and

(5) improve information and data on work related injuries, illnesses and fatalities for purposes of enhancing occupational safety and health.

**SEC. 3. REFERENCES.**

Except as otherwise provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

**TITLE I—SAFETY AND HEALTH PROGRAMS**

**SEC. 101. SAFETY AND HEALTH PROGRAMS.**

Section 27 (29 U.S.C. 676) is amended to read as follows:

**"SEC. 27. SAFETY AND HEALTH PROGRAMS.**

"(a) ESTABLISHMENT OF PROGRAM.—

"(1) IN GENERAL.—Each employer shall, in accordance with this section, establish and carry out a safety and health program to reduce or eliminate hazards and to prevent injuries and illnesses to employees.

"(2) MODIFICATIONS TO SAFETY AND HEALTH PROGRAMS.—The Secretary may, pursuant to regulations promulgated under subsection (c)(1), modify the application of the requirements of this section to classes of employers where the Secretary determines that, in light of the nature of the risks faced by the employees of such employers, such a modification would not reduce the employees' safety and health protection.

"(3) WORKSITES.—As used in this section and section 28, the term 'worksite' means a single physical location where business is conducted or where operations are performed by employees of an employer.

"(b) REQUIREMENTS.—A safety and health program established and carried out under

subsection (a) shall be a written program that shall include—

"(1) methods and procedures for identifying, evaluating, and documenting safety and health hazards;

"(2) methods and procedures for correcting the safety and health hazards identified under paragraph (1);

"(3) methods and procedures for investigating work-related fatalities, injuries and illnesses;

"(4) methods and procedures for providing occupational safety and health services, including emergency response and first aid procedures;

"(5) methods and procedures for employee participation in the implementation of the safety and health program, including participation through any safety and health committee established under section 28;

"(6) methods and procedures for responding to the recommendations of the safety and health committee, where applicable;

"(7) methods and procedures for providing safety and health training and education to employees and to members of any safety and health committee established under section 28;

"(8) the designation of a representative of the employer who has the qualifications and responsibility to identify safety and health hazards and the authority to initiate corrective action where appropriate;

"(9) in the case of a worksite where employees of two or more employers work, procedures for each employer to protect employees at the worksite from hazards under the employer's control, including procedures to provide information on safety and health hazards to other employers and employees at the worksite; and

"(10) such other provisions as the Secretary requires to effectuate the purposes of the Act.

"(c) REGULATIONS ON EMPLOYER SAFETY AND HEALTH PROGRAMS.—

"(1) GENERAL REGULATIONS.—

"(A) ESTABLISHMENT.—Not later than 1 year after the effective date of this section, the Secretary shall promulgate final regulations concerning the establishment and implementation of employer safety and health programs under this section.

"(B) TRAINING AND EDUCATION.—Regulations promulgated under subparagraph (A) shall include provisions for the training and education of employees, and of safety and health committee members, as required under subsection (b)(6). Such regulations shall—

"(i) provide for the training and education of employees, including safety and health committee members, in a manner that is readily understandable by such employees, concerning safety and health hazards, control measures, the employer's safety and health program, employee rights and applicable laws and regulations;

"(ii) provide for the training and education of safety and health committee, concerning methods and procedures for hazard recognition and control, the conduct of worksite safety and health inspections, the rights of the safety and health committee, and concerning other information necessary to enable such members to carry out the activities of the committee under section 28;

"(iii) require that training and education be provided to employees at the time of employment and to safety and health committee members at the time of selection; and

"(iv) require that refresher training be provided on at least an annual basis and that additional training be provided to employees and to safety and health committee members when there are changes in conditions or operations that may expose employees to new or different safety or health hazards or when there are changes in safety and health regulations or standards under this Act that apply to the employer.

"(2) NO LOSS OF PAY.—The time during which employees are participating in training and education activities under this subsection shall be considered as hours worked for purposes of wages, benefits, and other terms and conditions of employment. Such training and education shall be provided by an employer at no cost to the employees of the employer.".

## TITLE II—SAFETY AND HEALTH COMMITTEES AND EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES

### SEC. 201. SAFETY AND HEALTH COMMITTEES AND EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES.

(a) IN GENERAL.—Section 28 is amended to read as follows:

"SEC. 28. SAFETY AND HEALTH COMMITTEES AND EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES.

"(a) REQUIREMENT.—Each employer of not less than 11 employees shall provide for the establishment of safety and health committees and the selection of employee safety and health representatives in accordance with this section.

"(b) SAFETY AND HEALTH COMMITTEES.—

"(1) IN GENERAL.—Each employer covered by this section shall establish a safety and health committee at each worksite of the employer, except that the Secretary may, by regulation, modify the application of this paragraph to—

"(A) an employer whose employees do not primarily report to or work at a fixed location;

"(B) worksites at which less than eleven employees of a covered employer are employed; or

"(C) worksites where employees of more than one employer are employed.

Each employer required to establish a safety and health committee under this section shall, pursuant to regulations promulgated by the Secretary, enable such committee to exercise the rights described in this section.

"(2) MEMBERSHIP.—A committee established under paragraph (1) shall consist of—

"(A) the employee safety and health representatives elected or appointed under subsection (c)(2); and

"(B) as determined appropriate by the employer, employer representatives, the number of which may not exceed the number of employee representatives described in subparagraph (A).

"(3) CHAIRPERSONS.—A committee established under paragraph (1) shall be cochaired by—

"(A) a representative selected by the employer; and

"(B) a representative selected by the employee members of such committee.

"(4) RIGHTS.—A committee established under paragraph (1) shall have the right, within reasonable limits and in a reasonable manner, to—

"(A) review any safety and health program established under section 27 by the employer;

"(B) review incidents involving work-related fatalities, injuries and illnesses and complaints regarding safety or health hazards by employees;

"(C) review, upon the request of the committee or upon the request of the employer representatives or employee representatives of the committee, the employer's work injury and illness records, other than personally identifiable medical information, and other reports or documents relating to occupational safety and health;

"(D) conduct inspections of the worksite at least once every 3 months and in response to complaints regarding safety or health hazards by employees or committee members;

"(E) conduct interviews with employees in conjunction with inspections of the worksite;

"(F) conduct meetings, at least once every 3 months, and maintain written minutes of such meetings;

"(G) observe the measurement of employee exposure to toxic materials and harmful physical agents;

"(H) establish procedures for exercising the rights of the committee;

"(I) make recommendations on behalf of the committee, and in making such recommendations, permit any member of such committee to submit the separate views of such member, or on behalf of the employer or employee representatives on such committee, to the employer for improvements in the employer's safety and health program and for the correction of hazards to employee safety or health, except that such recommendations shall be advisory only and the employer shall retain full authority to manage the worksite; and

"(J) accompany the Secretary or the Secretary's representative during any physical inspection of the worksite under section 8(a).

"(5) TIME FOR COMMITTEE ACTIVITIES.—The employer shall permit members of the committee established under paragraph (1) to take such time from work as is reasonably necessary to exercise the rights of the committee, without suffering any loss of pay or benefits for time spent on duties of the committee.

"(6) REGULATIONS.—Not later than 1 year after the effective date of this section, the Secretary shall promulgate final regulations for the establishment and functioning of safety and health committees under this section. Such regulations shall include provisions concerning—

"(A) the establishment of such committees by an employer whose employees do not primarily report to or work at a fixed location;

"(B) the establishment of such committees with regard to worksites at which less than 11 employees of a covered employer are employed;

"(C) the establishment of committees at worksites where employees of more than one employer are employed; and

"(D) the employer's obligation to enable the committee to function properly and effectively, including the provision of facilities and materials necessary for the committee to conduct its activities, and the maintenance of records and minutes developed by the committee.

"(c) EMPLOYEE SAFETY AND HEALTH REPRESENTATIVES.—

"(1) IN GENERAL.—Safety and health committees established under this section shall include—

"(A) one employee safety and health representative where the average number of nonmanagerial employees of the employer at the worksite during the year ending January 1 was more than 10, but less than 50;

"(B) two employee safety and health representatives where the average number of nonmanagerial employees of the employer at the worksite during the year ending January 1 was more than 50, but less than 100;

"(C) an additional employee safety and health representative for each additional 100

such employees at the worksite, up to a maximum of six employee safety and health representatives, except as provided in paragraph (2)(C); and

"(D) where an employer's employees do not primarily report to or work at a fixed location, at worksites at which less than 11 employees of a covered employer are employed, or at worksites where employees of more than one employer are employed, a number of employee safety and health representatives as determined by the Secretary by regulation.

"(2) SELECTION.—Employee safety and health representatives shall be selected by and from among the employer's nonmanagerial employees, as follows:

"(A) Where none of the employer's employees at a worksite are represented by an exclusive bargaining representative, the employees shall elect employee safety and health representatives in an election held in conformity with procedures pursuant to regulations promulgated by the Secretary.

"(B) Where the employer's employees are represented by a single exclusive bargaining representative, the bargaining representative shall designate the employee safety and health representatives.

"(C) Where the employer's employees are represented by more than one exclusive representative or where some but not all of the employees are represented by an exclusive representative, each bargaining unit of represented employees (and any residual group of unrepresented employees) shall have a proportionate number of employee safety and health representatives based on the number of employees in each bargaining unit or group, except that each such unit or group of 11 or more employees shall have at least one representative. The selection process shall be conducted in accordance with the provisions of subparagraph (A) or (B) as applicable.

"(3) REGULATIONS.—Not later than 1 year after the effective date of this section, the Secretary shall promulgate regulations concerning safety and health representatives. Such regulations shall include provisions concerning—

"(A) the number of employee safety and health representatives where an employer's employees do not primarily report to work at a fixed location;

"(B) the number of employee safety and health representatives with respect to worksites at which less than 11 employees of a covered employer are employed;

"(C) the number of employee safety and health representatives at worksites where employees of more than one employer are employed; and

"(D) the selection and election procedures for employee safety and health representatives, such election procedures to provide for a fair election by secret ballot and protect employee's equal rights to participate in the election without being subject to penalty, discipline, improper interference or reprisal.

"(d) ADDITIONAL RIGHTS.—The rights and remedies provided to employees and employee safety and health representatives by this section are in addition to, and not in lieu of, any other rights and remedies provided by contract, by other provisions of this Act or by other applicable law, and are not intended to alter or affect such rights and remedies.".

(b) EFFECT OF AMENDMENT.—The amendment made by subsection (a) shall not be construed to affect the amendments made by section 28 of the Occupational Safety and Health Act of 1970 as such section existed on the date of enactment of such Act.

## TITLE III—COVERAGE

### SEC. 301. EXTENSION OF COVERAGE TO PUBLIC EMPLOYEES.

(a) DEFINITION OF EMPLOYER.—Section 3(5) (29 U.S.C. 652(5)) is amended by striking "but does not include" and inserting "including".

(b) CONFORMING AMENDMENTS.—

(1) Section 19 (29 U.S.C. 668) is repealed.

(2) Section 410(b) of title 39, United States Code, is amended by striking paragraph (7) and inserting the following new paragraph:

"(7) the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.);".

### SEC. 302. APPLICATION OF ACT.

Section 4(b) (29 U.S.C. 653(b)(1)) is amended—

(1) in paragraph (1) to read as follows:

"(1) Where a Federal agency has promulgated and is enforcing standards or regulations affecting the occupational safety or health of some or all of the employees within that agency's regulatory jurisdiction, and the Secretary of Labor determines that a standard or regulation as promulgated and the manner in which such standard or regulation is being enforced provides protection to those employees that is at least as effective as the protection provided to those employees by the Secretary's enforcement of this Act, the Secretary may publish a notice in the Federal Register setting forth such determination and the reasons therefore and certifying that the Secretary has ceded jurisdiction to that Federal agency with respect to the specified hazards to which the designated employees are exposed. Such certification shall remain in effect unless and until rescinded by the Secretary.";

(2) by redesignating paragraphs (2) through (4) as paragraph (5) through (7), respectively; and

(3) by inserting after paragraph (1), the following new paragraphs:

"(2) The Secretary shall, by regulation, establish procedures by which any affected person may petition the Secretary to rescind a certification under paragraph (1). Upon receipt of such a petition the Secretary shall investigate the matter and shall, within 90 days after receipt of the petition, publish a decision with respect to the petition in the Federal Register.

"(3) Any person who may be adversely affected by a decision of the Secretary certifying that the Secretary has ceded jurisdiction to another Federal agency pursuant to paragraph (1), or by a decision of the Secretary denying a petition to rescind such a certification under paragraph (2), may at any time prior to the 60th day after such decision is published in the Federal Register file a petition challenging such decision with the United States court of appeals for the circuit wherein such person resides or has his or her principal place of business, for judicial review of such decision. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary's decision shall be set aside if found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(4) Nothing in this Act shall apply to working conditions covered by the Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).".

### SEC. 303. APPLICATION OF OSHA TO DOE NUCLEAR FACILITIES.

Paragraph (6) of section 4(b) (29 U.S.C. 653(b)(2)) (as redesignated by section 302(2)) is amended to read as follows:

"(6) Notwithstanding paragraph (1) or any other provision of this law, this Act shall apply with respect to employment performed in the Federal nuclear facilities under the control or jurisdiction of the Department of Energy.".

### SEC. 304. EXTENSION OF EMPLOYER DUTIES TO ALL EMPLOYEES WORKING AT A PLACE OF EMPLOYMENT.

Paragraph (1) of section 5(a) (29 U.S.C. 654(a)(1)) is amended to read as follows:

"(1) shall furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employees of the employer or to other employees at the place of employment.".

## TITLE IV—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

### SEC. 401. TIMEFRAMES FOR SETTING STANDARDS.

(a) RECOMMENDATIONS AND PETITIONS FOR STANDARDS.—Paragraph (2) of section 6(b) (29 U.S.C. 655(b)(2)) is amended to read as follows:

"(2)(A) If the Secretary receives a recommendation of an advisory committee, the Secretary of Health and Human Services or the Administrator of the Environmental Protection Agency or a petition from an interested person that sets forth with reasonable particularity the facts that the person claims establish that an occupational safety or health standard should be promulgated, modified or revoked, the Secretary shall, not later than 90 days after receipt of such recommendation or petition, publish in the Federal Register a response stating whether the Secretary intends to publish a proposed rule promulgating, modifying or revoking such standard.

"(B) If the response of the Secretary under subparagraph (A) states that the Secretary does not intend to publish a proposed rule, the Secretary shall set forth the reasons for that decision. In all other cases, the Secretary shall, not later than 12 months after the receipt of a recommendation or petition under subparagraph (A), publish in the Federal Register a proposed rule promulgating, modifying or revoking the standard discussed in the petition or recommendation.".

(b) PROCEDURE FOR COMMENT AND HEARING.—Paragraph (3) of section 6(b) (29 U.S.C. 655(b)(3)) is amended—

(1) by redesignating such paragraph as subparagraph (B) of paragraph (3); and

(2) by inserting before such subparagraph, as so redesignated, the following new subparagraph:

"(A) Where information developed by or submitted to the Secretary indicates that a rule should be proposed promulgating, modifying, or revoking an occupational safety or health standard, the Secretary shall publish such a proposed rule in the Federal Register and shall afford interested persons a period of at least 30 days after publication to submit written data or comments.".

(c) TIME FRAME FOR ISSUING RULES.—Section 6(b)(4) (29 U.S.C. 655(b)(4)) is amended by striking "sixty days" both places such appears and inserting "180 days".

(d) REVIEW OF SECRETARY'S FAILURE OR REFUSAL TO ISSUE RULES.—Section 6 (29 U.S.C. 655) is amended—

(1) by adding at the end of subsection (f) the following new sentence: "Judicial review of the validity of an occupational safety and health standard may be obtained exclusively through a petition for review in the appropriate United States court of appeals, acting under this subsection or under subsection (h).''; and

(2) by adding at the end thereof the following new subsection:

"(h)(1) Any person who may be adversely affected by a determination by the Secretary

under subsection (b)(2) not to propose a rule promulgating, modifying, or revoking a standard may at any time prior to the expiration of 60 days after such determination is published in the Federal Register file a petition seeking review of such determination with the United States court of appeals for the circuit wherein such person resides or has his or her principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary's determination shall be set aside if found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(2) Any person who may be adversely affected by a failure of the Secretary to take any action required by this section within the time period prescribed by this section may at any time after such period of time has elapsed file a petition for review stating that such action has been unlawfully withheld or unreasonably delayed. Such petition may be filed with the United States court of appeals for the circuit wherein such person resides or has his or her principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The reviewing court shall compel the Secretary to take any action that is found to have been unlawfully withheld or unreasonably delayed. In deciding whether to compel such action the court shall consider whether the Secretary's failure to act is consistent with the time limits set forth in this section. The Secretary's desire to confer with, or to receive approval from any other Federal agency or Federal executive official, shall not justify the withholding or delaying of action by the Secretary, except where such consultation or solicitation of approval is required by Federal law.".

**SEC. 402. BASIS FOR STANDARDS.**

Paragraph (8) of section 3 (29 U.S.C. 652(8)) is amended to read as follows:

"(8) The term 'occupational safety and health standard' means a standard that addresses a significant risk to the safety or health of employees by requiring conditions, or the adoption or use of one or more practices, means, methods, operations, or processes that most adequately assure, to the extent feasible, safe and healthful employment and places of employment.".

**SEC. 403. RECORDING OF WORK RELATED ILLNESSES.**

Section 6(b)(7) (29 U.S.C. 655(b)(7)) is amended by inserting after the third sentence the following new sentence: "The standard shall also prescribe requirements for recording or reporting a work-related illness determined as a result of a medical examination or test conducted under the standard.".

**SEC. 404. PUBLIC DISCLOSURE OF ALL COMMUNICATIONS ON STANDARDS.**

Section 6(b) (29 U.S.C. 655(b)) is amended by adding at the end thereof the following new paragraph:

"(9) The Secretary shall place all written comments and communications, and a summary of all verbal communications, with parties outside the Department of Labor (including communications with other government agencies), regarding the promulgation, modification or revocation of a standard under this section, in the public record.".

**SEC. 405. REVISION OF PERMISSIBLE EXPOSURE LIMITS.**

Section 6 (29 U.S.C. 655) (as amended by section 401(d)) is further amended by adding at the end thereof the following new subsection:

"(i) In addition to other health and safety standards promulgated under subsection (b), the Secretary shall, in cooperation with the Secretary of Health and Human Services, modify and establish exposure limits for toxic materials and harmful physical agents on a regular basis, in accordance with the requirements of subsection (b)(5), in the following manner:

"(1) The Secretary of Health and Human Services, acting through the National Institute for Occupational Safety and Health, shall regularly evaluate available scientific evidence, data and information to determine if exposure limits for toxic materials and harmful physical agents promulgated under subsections (a) and (b) should be modified or established to protect exposed employees against material impairment of health or functional capacity. Such evaluations shall include a review of the scientific literature, standards of private and professional organizations, national consensus standards, standards adopted by other countries, and recommendations of State and Federal agencies.

"(2) Not less than once every 3 years the Secretary of Health and Human Services, acting through the National Institute for Occupational Safety and Health, shall develop and transmit to the Secretary recommendations identifying toxic materials and harmful physical agents, if any, for which exposure limits should be modified or established to protect employees from material impairment of health or functional capacity. For each such material or agent, the recommendation shall include a suggested permissible exposure limit, the basis for the suggested exposure limit and, where available, information on feasible control measures.

"(3) Not later than 30 days after the receipt of such recommendations, the Secretary shall publish such recommendations on exposure limits in the Federal Register and provide a period of 30 days for public comment. The Secretary shall evaluate the recommendations and public comments and, not later than 6 months after the receipt of such recommendations, shall publish a proposed rule to maintain, modify or establish exposure limits for each toxic material and harmful physical agent as to which the Secretary of Health and Human Services has recommended that exposure limits be modified or established. If a proposed exposure limit is not the same as the exposure limit suggested by the Secretary of Health and Human Services, the Secretary shall explain why the suggested limit is not being proposed.

"(4) Not later than 1 year after the publication of the proposed exposure limits, the Secretary shall issue a final standard and such standard shall be subject to the requirements of subsection (b)(5). If a final exposure limit is not the same as the exposure limit suggested by the Secretary of Health and Human Services, the Secretary shall explain the reasons that the suggested exposure limit is not being adopted.

"(5) In addition to the periodic review of permissible exposure limits required by this subsection, the Secretary shall also establish or modify exposure limits for toxic materials and harmful physical agents whenever such action is warranted, pursuant to subsections (b)(5) and (g).".

**SEC. 406. EXPOSURE MONITORING AND MEDICAL SURVEILLANCE.**

Section 6 (42 U.S.C. 655) (as amended by sections 401(d) and 405) is further amended by adding at the end thereof the following new subsection:

"(j)(1) Not later than 2 years after the effective date of this subsection, the Secretary shall promulgate final standards on exposure monitoring and medical surveillance programs in accordance with subsection (b)—

"(2) The standards on exposure monitoring promulgated under paragraph (1) shall include the following:

"(A) Requirements for a formal exposure assessment in a case where workers may be exposed to toxic materials or harmful physical agents that are subject to standards issued under this section, including toxic materials or harmful physical agents covered under section 1910.1200 of title 29, Code of Federal Regulations.

"(B) Requirements for regular monitoring and measurement of toxic materials or harmful physical agents for which an exposure limit has been established by the Secretary or adopted by the employer, where such monitoring and measurements will assist in protecting the health and safety of workers exposed to such toxic materials or harmful physical agents.

"(C) Requirements for a written compliance plan for reducing exposures where exposures are determined to exceed limits established by the Secretary or adopted by the employer.

"(D) Requirements for employees to be notified in writing of exposures above exposure limits established by the Secretary or adopted by the employer and the steps the employer is taking to reduce exposures.

"(E) Requirements for the maintenance of and access to exposure records according to the provisions of section 1910.20 of title 29, Code of Federal Regulations.

"(F) Requirements for any safety and health committee established under section 28 to review the exposure assessment and exposure monitoring program, to observe exposure monitoring, to receive and have access to copies of assessment and monitoring results, to review written compliance plans, and to make recommendations with respect to such programs and plans.

"(3) The standards on medical surveillance programs promulgated under paragraph (1) shall include the following:

"(A) Requirements for an evaluation of employee exposure assessments and exposure monitoring to identify which employees may be at risk of material impairment of health or functional capacity due to exposure to toxic materials or harmful physical agents.

"(B) Requirements for periodic medical examinations for employees identified to be at risk of material impairment of health or functional capacity due to exposure to toxic materials or harmful physical agents where such examinations are appropriate to identify or to prevent material impairment to health or functional capacity.

"(C) Requirements for the evaluation of the results of medical examinations to determine if an employee or a group of employees are exhibiting indications of present or potential material impairment of health or functional capacity due to exposure to toxic substances or harmful physical agents.

"(D) Requirements for the notification of employees of the results of medical examinations in a manner that is understood by the employees.

"(E) Provisions setting forth the qualifications for health care providers who may conduct medical examinations mandated by this section. Where feasible, the Secretary in cooperation with the Secretary of Health and Human Services shall establish criteria and procedures for the certification of health care providers who conduct medical examinations under this section.

"(F) Provisions to assure the confidentiality of personally identifiable medical information developed under this section.

"(G) Provisions to prohibit discrimination against employees based on the results of medical examinations and, as appropriate, provisions to provide for the protection of the wages, benefits, seniority and other relevant conditions of employment of employees who are transferred or removed from their jobs due to the result of medical examinations conducted under this section.

"(H) Records developed under this subsection shall be maintained and made available according to the provisions of section 1910.20 of title 29, Code of Federal Regulations.

"(I) Requirements for the safety and health committee established under section 28 to review the employer's medical surveillance program and to make recommendations with respect thereto. ".

**SEC. 407. STANDARD ON ERGONOMIC HAZARDS.**

Section 6 (42 U.S.C. 655) (as amended by sections 401(d), 405 and 406) is further amended by adding at the end thereof the following new subsection:

"(k)(1) Not later than 1 year after the effective date of this subsection, the Secretary shall issue a final standard on ergonomic hazards to protect employees from work-related musculoskeletal disorders in accordance with subsection (b)(5).

"(2) The final standard issued under paragraph (1) shall include the following:

"(A) A requirement for an ergonomics program for employees who are exposed to ergonomic hazards, that shall include provisions for hazard identification, control measures, medical management, training and education, and employee participation.

"(B) Requirements for an evaluation of job processes, work station design, rate of work, and work methods to identify ergonomic risk factors that cause or are likely to cause musculoskeletal disorders.

"(C) Requirements for control measures to reduce stressors and musculoskeletal disorders including engineering controls, new equipment or work organization controls.

"(D) Requirements for an effective medical management program for musculoskeletal disorders including requirements for qualified health care providers, health surveillance, appropriate diagnosis, treatment, and followup.

"(E) Requirements for recording musculoskeletal disorders as an illness as defined under section 8(c)(2) and reporting such illnesses to the Secretary.

"(F) Requirements for the training and education of employees exposed to ergonomic hazards on ergonomic risk factors, control measures and the employer's medical management program.

"(G) Requirements for employee participation in the establishment and implementation of the employer's ergonomic program through any safety and health committee established under section 28.".

**SEC. 408. TIMETABLE FOR SPECIFIC STANDARDS.**

Section 6 (42 U.S.C. 655) (as amended by sections 401(d), 405, 406 and 407) is further amended by adding at the end thereof the following new subsection:

"(l) The Secretary shall issue the following safety and health standards under subsection (b):

"(1) Not later than November 30, 1991, the Secretary shall issue a final standard concerning bloodborne pathogens.

"(2) Not later than December 31, 1991, the Secretary shall issue final standards concerning:

"(A) permissible exposure limits, update for construction, maritime and agriculture;

"(B) electric power generator, transmission and distribution;

"(C) logging operations;

"(D) face, head, eye and foot protection;

"(E) walking and working surfaces;

"(F) hazardous materials; and

"(G) motor vehicle inspection, maintenance and safety.

"(2) Not later than June 30, 1992, the Secretary shall issue final standards on:

"(A) cadmium;

"(B) confined space entry;

"(C) asbestos (remand);

"(D) accreditation of training for programs for hazardous waste operations; and

"(E) methylene chloride.

"(3) Not later than December 31, 1992, the Secretary shall issue final standards on:

"(A) respiratory protection;

"(B) 1,3-butadiene;

"(C) scaffolds;

"(D) fall protection; and

"(E) glycol ethers.

"(4) Not later than December 31, 1993, the Secretary shall issue final standards on:

"(A) indoor air quality; and

"(B) safety and health regulations for longshoring.

"(5) Nothing in this subsection shall be construed as limiting the Secretary from issuing additional safety and health standards under subsection (b).".

## TITLE V—ENFORCEMENT

**SEC. 501. NO LOSS OF EMPLOYEE PAY FOR INSPECTIONS.**

Section 8(e) (29 U.S.C. 657(e)) is amended by inserting after the first sentence the following new sentence: "Time spent by an employee on any such inspection shall be deemed to be hours worked for purposes of wages, benefits, and other terms and conditions of employment.".

**SEC. 502. COMPLAINTS.**

Section (8)(f)(1) (29 U.S.C. 657(f)(1)) is amended—

(1) in the first sentence, by inserting "the Act or" after "violation of"; and

(2) by inserting after the third sentence the following new sentence: "If the Secretary, upon notification from any other source determines that there are reasonable grounds to believe that an imminent danger (as described in section 13(a)) or serious violation (as described in section 17(k)) exists in a place of employment, the Secretary shall also make a special inspection in accordance with this section.".

**SEC. 503. TIMEFRAME FOR RESPONSE.**

The last sentence of section 8(f)(1) (29 U.S.C. 657(f)(1)) is amended by inserting before the period the following: "not later than 30 days after the receipt of the request for inspection".

**SEC. 504. MANDATORY SPECIAL EMPHASIS.**

Section 8 (29 U.S.C. 657) is amended by adding at the end thereof the following new subsection:

"(h)(1) The Secretary shall establish and carry out a special emphasis inspection program for conducting inspections of industries or operations where existing hazards, newly recognized or new hazards introduced into worksites warrant a more intensive than normal inspection program.

"(2) The Secretary shall annually designate the industries and operations for the special emphasis inspection program and identify the number of special emphasis inspections that the Secretary plans to conduct in each designated industry and operation and the number of enforcement personnel required for such inspections.

"(3) Inspections conducted under this subsection shall be in addition to other inspections conducted under this Act.

"(4) The Secretary shall annually submit a report to the Congress on the special emphasis inspection program as part of the Secretary's annual report required under section 26 which shall include the information on inspections described in paragraph (2) that were carried out in the preceding and current year.".

**SEC. 505. INVESTIGATIONS OF FATALITIES AND SERIOUS INCIDENTS.**

Section 8 (29 U.S.C. 657) (as amended by section 504) is further amended by adding at the end thereof the following new subsection:

"(i)(1) The Secretary shall investigate any work-related fatality or serious incident.

"(2) If a fatality or serious incident occurs in a place of employment covered by this Act, the employer shall notify the Secretary of the fatality or serious incident and shall take appropriate measures to prevent the destruction or alteration of any evidence that would assist in investigating the fatality or serious incident.

"(3) As used in this subsection, the term 'serious incident' means an incident that results in the hospitalization of two or more employees.".

**SEC. 506. ABATEMENT OF SERIOUS HAZARDS DURING EMPLOYER CONTESTS.**

(a) CITATIONS.—Section 9(a) (29 U.S.C. 658(a)) is amended by inserting after the third sentence the following new sentence: "If the Secretary or an authorized representative of the Secretary believes that an alleged violation is serious and presents such a substantial risk to the safety or health of employees that the initiation of review proceedings should not suspend the running of the period for the correction of the violation, the citation shall so state.".

(b) CITATIONS AND ENFORCEMENT.—Section 10 (29 U.S.C. 659) is amended—

(1) in subsection (b), by striking out "(which period shall not begin to run until the entry of a final order by the Commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties)"; and

(2) by adding at the end thereof the following new subsection:

"(d)(1) Except as provided in paragraphs (2) and (3), the period permitted for the correction of a violation shall begin to run from the date of the receipt of the citation.

"(2) If the employer initiates timely review proceedings under this section in which the employer contests matters other than the proposed assessment of penalty or characterization of the violation and the proceedings are initiated by the employer in good faith and not solely for delay, the period permitted for the correction of a violation shall, except as provided in paragraph (3), not begin to run until the entry of a final order by the Commission.

"(3) If the citation states that the violation is serious and presents such a substantial risk to the safety or health of employees that the initiation of review proceedings shall not suspend the running of the period for correction of the violation and if, simultaneous with initiating timely review proceedings under the citation, the employer files a statement asserting that the period for correction of the violation should be suspended during such proceedings, the Commission shall expedite the consideration and decision of the employer's review proceeding. In its decision resolving that proceeding, the Commission may modify the citation's pro-

vision that the period for the correction of the violation shall run from the date of the receipt of the citation, if the Commission determines, based on a consideration of the nature of the violation, that the nature and degree of risk posed to employees by the employer's refusal to undertake prompt correction of the violation, and the extent of any irreparable injury the employer would incur by undertaking correction of the violation during the pendency of review proceedings, that such provision is unreasonable in the circumstances.".

(c) PENALTIES.—Section 17(d) (29 U.S.C. 666(d)) is amended by striking out "(which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties)".

(d) VERIFICATION OF ABATEMENT.—Section 10 (as amended by subsection (b)) is further amended by adding at the end thereof the following new subsection:

"(e)(1) Each employer to whom a citation for a serious, willful or repeated violation has been issued under section 9 shall verify the abatement of such violation in writing to the Secretary not later than 30 days after the period for the correction of the violation has expired, with appropriate documentary evidence. Each such employer shall prominently post, at or near each place that a violation referred to in the citation occurred, a notice that the violation has been abated, and shall make available to employees and employee representatives for inspection a copy of the verification of abatement provided to the Secretary pursuant to this subsection.

"(2) Not later than 1 year after the effective date of this subsection, the Secretary shall promulgate final regulations regarding the requirements of this subsection, including provisions concerning—

"(A) the documentary evidence required to verify abatement of a violation; and

"(B) the posting of notice of abatement of a violation.".

**SEC. 507. RIGHT TO CONTEST CITATIONS AND PENALTIES.**

The first sentence of section 10(c) (29 U.S.C. 659(c)) is amended by inserting after "files a notice with the Secretary" the following: "alleging that the citation fails properly to designate the provisions of the Act, standard, rule, regulation or order that have been violated, or that the citation fails properly to designate the violation as serious, willful or repeated, or that the proposed penalty is not adequate, or".

**SEC. 508. RIGHT OF EMPLOYEE REPRESENTATIVES TO PARTICIPATE IN OTHER PROCEEDINGS.**

The last sentence of section 10(c) (29 U.S.C. 659(c)) is amended by inserting after "participate as parties to hearings" the following: "or other proceedings conducted".

**SEC. 509. OBJECTIONS TO MODIFICATION OF CITATIONS.**

Section 10 (29 U.S.C. 659) (as amended by section 506) is further amended by adding at the end thereof the following new subsection:

"(f)(1) If the Secretary intends to withdraw or to modify a citation as a result of any agreement with the cited employer, the rules of procedure prescribed by the Commission shall provide for prompt notice to affected employees or representatives of affected employees, and that such notice include the terms of the proposed agreement.

"(2) Not later than 15 working days after the receipt of the notice provided in accordance with paragraph (1), any employee or representative of employees, regardless of whether such employee or representative has previously elected to participate in the proceedings, shall have the right to file a notice with the Secretary alleging that the proposed agreement fails to effectuate the purposes of this Act, and stating the respects in which it fails to do so.

"(3) Upon receipt of a notice filed under paragraph (2), the Secretary shall consider the matter, and if the Secretary determines to proceed with the proposed agreement, shall respond with particularity to the statements presented in that notice.

"(4) Not later than 15 working days following the Secretary's response provided pursuant to paragraph (3), the employee or representative of employees shall upon filing a petition for service with the Commission have the right to a hearing as to whether adoption of the proposed agreement would effectuate the purposes of the Act, including a determination as to whether the proposed agreement would adequately abate the alleged violations.

"(5) If the Commission determines that a proposed agreement fails to effectuate the purposes of the Act, the proposed agreement shall not be entered as an order of the Commission, nor shall the citation be withdrawn or modified in accordance with the proposed agreement.".

**SEC. 510. IMMINENT DANGER INSPECTIONS.**

(a) CORRECTION OF CONDITIONS.—Section 13 (29 U.S.C. 662) is amended—

(1) by striking out subsection (c);

(2) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(3) by inserting before subsection (b), as so redesignated, the following new subsection:

"(a)(1) If any representative of the Secretary determines, on the basis of an inspection or investigation under this section, that a condition or practice in a place of employment is such that an imminent danger to safety or health exists that could reasonably be expected to cause death or serious physical harm or permanent impairment of the health or functional capacity of employees if not corrected immediately, the representative of the Secretary shall so inform the employer and affected employees and shall request that the condition or practice be corrected immediately or that employees be immediately removed from exposure to such danger.

"(2) If the employer refuses to comply with a request under paragraph (1), the representative of the Secretary shall consult by telephone or similarly direct medium of communication with the Secretary or the Secretary's designee to determine whether notice should be posted in the workplace pursuant to paragraph (3).

"(3) If the Secretary or the Secretary's designee so authorizes, the representative of the Secretary shall immediately cause notice to be posted in the workplace identifying the equipment, process or practice that is the source of the imminent danger. Such notice shall take the form of a tag or other device that will be seen by employees who might otherwise be exposed to the dangerous equipment, process or practice. The notice shall be removed only by the Secretary or a representative of the Secretary.

"(4) The fact that such notice has been posted shall be noted in any citation issued pursuant to section 9 with respect to the hazard involved.

"(5) No person shall discharge or in any manner discriminate against any employee because such employee has refused to perform a duty that would expose the employee to the condition or a practice that has been identified as the source of imminent danger by a notice posted pursuant to paragraph (3). The right to refuse to perform such a duty shall be in addition to any other right to refuse to perform hazardous work that is afforded to employees by this Act, by standards or regulations issued pursuant to this Act, by contract, or by other applicable law.".

(4) in subsection (b), as so redesignated, by striking out the first sentence and inserting in lieu thereof the following new sentence: "The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which pose an imminent danger as described in subsection (a).".

(b) PENALTIES.—Subsection (e) of section 17 (29 U.S.C. 666) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) In the event that an employer does not immediately correct the hazard referenced in a notice posted under section 13(a) or remove all employees from exposure thereto, the employer shall be assessed a civil penalty of not less than $10,000 and not more than $50,000 for each day during which an employee continues to be exposed to the hazard. This paragraph shall not apply if the Commission determines that the condition or practice was not of such a nature as to be covered by section 13(a).".

**SEC. 511. CITATIONS AND PENALTIES FOR VIOLATIONS OF SECTION 27 AND SECTION 28.**

(a) CITATIONS.—Section 9(a) (29 U.S.C. 658(a)) is amended by inserting ", 27 or 28" after "section 5".

(b) PENALTIES.—Section 17 (29 U.S.C. 666) is amended—

(1) in subsection (a), by inserting ", 27 or 28" after "section 5";

(2) in subsection (b), by inserting ", 27 or 28" after "section 5"; and

(3) in subsection (c), by inserting ", 27 or 28" after "section 5".

**SEC. 512. OSHA CRIMINAL PENALTIES.**

(a) IN GENERAL.—Section 17 (29 U.S.C. 666) is amended—

(1) in subsection (e)—

(A) by striking "fine of not more than $10,000" and inserting "fine in accordance with section 3571 of title 18, United States Code,";

(B) by striking "six months" and inserting "10 years";

(C) by striking "fine of not more than $20,000" and inserting "fine in accordance with section 3571 of title 18, United States Code,"; and

(D) by striking "one year" and inserting "20 years";

(2) in subsection (f), by striking "fine of not more than $1,000 or by imprisonment for not more than six months," and inserting "fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 2 years,";

(3) in subsection (g), by striking "fine of not more than $10,000, or by imprisonment for not more than six months," and inserting "fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 1 year,";

(4) by redesignating subsections (h) through (l) as subsections (i) through (m), respectively;

(5) by inserting after subsection (g) the following new subsection:

"(h) Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 6, or any regulation prescribed pursuant to this Act, and that violation causes serious bodily injury to any employee but does not cause death to any employee, shall, upon conviction, be punished by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 5 years, or by both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 10 years, or by both,"; and

(6) by adding at the end the following new subsection:

"(n) If a penalty or fine is imposed on a director, officer, or agent of an employer under subsection (e), (f), (g), or (h), such penalty or fine shall not be paid out of the assets of the employer on behalf of that individual.".

(b) DEFINITION.—Section 3 (29 U.S.C. 652) is amended by adding at the end thereof the following new paragraph:

"(15) The term 'serious bodily injury' means bodily injury that involves—

"(A) a substantial risk of death;

"(B) protracted unconsciousness;

"(C) protracted and obvious physical disfigurement; or

"(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.".

(c) JURISDICTION FOR PROSECUTION UNDER STATE AND LOCAL CRIMINAL LAWS.—Section 17 (29 U.S.C. 666) (as amended by subsection (a)) is further amended by adding at the end thereof the following new subsection:

"(o) Nothing in this Act shall preclude State and local law enforcement agencies from conducting criminal prosecutions in accordance with the laws of such State or locality.".

## TITLE VI—PROTECTION OF EMPLOYEES FROM DISCRIMINATION

### SEC. 601. ANTIDISCRIMINATION PROVISIONS.

Section 11(c) (29 U.S.C. 660(c)) is amended—

(1) in paragraph (1), by adding before the period the following: ", including reporting any injury, illness or unsafe condition to the employer, agent of the employer, the safety and health committee or employee safety and health representative";

(2) by striking out paragraphs (2) and (3), and inserting the following new paragraphs:

"(2) No person shall discharge or in any manner discriminate against an employee for refusing to perform the employee's duties because of the employee's reasonable apprehension that performing such duties would result in serious injury to the employee or other employees. The circumstances causing the employee's apprehension of serious injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee would conclude that there is a bona fide danger of an injury or serious impairment of health resulting from the circumstances. In order to qualify for protection, the employee must have sought from his employer, and have been unable to obtain, corrections of the circumstances causing the refusal to perform the employee's duties.

"(3) Any employee who believes that such employee has been discharged, disciplined, or otherwise discriminated against by any person in violation of this subsection may, within 180 days after such alleged violation occurs, file (or have filed by any person on the employee's behalf) a complaint with the Secretary alleging such discharge, discipline, or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

"(4)(A) Not later than 60 days after the receipt of a complaint filed under paragraph (3), the Secretary shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and shall notify the complainant and the person alleged to have committed a violation of this section of such findings. Where the Secretary has concluded that there is reasonable cause to believe that a violation has occurred, the Secretary shall accompany such findings with a preliminary order providing the relief prescribed by this subsection. Thereafter, either the person alleged to have committed the violation or the complainant may, within 30 days, file objections to the findings or preliminary order, or both, and request a hearing on the record, except that the filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be expeditiously conducted. Where a hearing is not timely requested, the preliminary order shall be deemed a final order which is not subject to judicial review. Upon the conclusion of such hearing, the Secretary shall issue a final order within 120 days. In the interim, such proceedings may be terminated at any time on the basis of an agreenent entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

"(B) If, in response to a complaint filed under paragraph (1) or (2), the Secretary determines that a violation of this subsection has occurred, the Secretary shall order—

"(i) the person who committed such violation to take action to correct the violation;

"(ii) such person to reinstate the complainant to the complainant's former position together with the compensation (including backpay), terms, conditions, and privileges of the complainant's employment; and

"(iii) compensatory damages.

If such an order is issued, the Secretary, at the request of the complainant, may assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) reasonably incurred as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

"(5)(A) Any person adversely affected or aggrieved by an order issued after a hearing under paragraph (4)(B) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred, or the circuit in which such person resided on the date of such violation. The petition for review must be filed within 60 days from the issuance of the order of the Secretary. Such review shall be in accordance with the provisions of chapter 7, of title 5, United States Code, and shall be heard and decided expeditiously.

"(B) Whenever a person has failed to comply with an order issued under paragraph (4)(B), the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur in order to enforce such order. In actions brought under this subsection, the district court shall have jurisdiction to grant all appropriate relief, including injunctive relief, reinstatement, back pay and compensatory damages.

"(6) The legal burdens of proof that prevail under section 1221(e) of title 5, United States Code, shall govern adjudication of protected activities under this subsection.".

## TITLE VII—OSHA AND NIOSH TRAINING AND EDUCATION

### SEC. 701. OSHA AND NIOSH TRAINING ACTIVITIES.

(a) EXPANSION.—Section 21 (29 U.S.C. 670) is amended—

(1) in subsection (a) by inserting after "qualified personnel to carry out the purpose of this Act," the following: ", including education programs for employees and members of safety and health committees, as appropriate,"; and

(2) by adding at the end thereof the following new subsection:

"(d) The Secretary shall develop, directly or by grants or contracts, training materials, model curricula and programs to assist employers in providing the training and education required by section 27 and in complying with the standards issued under section 6.".

## TITLE VIII—RECORDKEEPING AND REPORTING

### SEC. 801. DATA COLLECTED BY SECRETARY.

Section 24(a) (29 U.S.C. 673) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraphs:

"(2) For the purpose of setting safety and health standards, targeting inspections to individual establishments, evaluating standard setting and enforcement programs, and for other purposes, the Secretary shall collect information and conduct analyses that identify—

"(A) industries, employers, processes, operations, and occupations that have a high rate of injury or illness;

"(B) factors that cause or contribute to injuries and illnesses; and

"(C) workers' compensation costs associated with the injuries and illnesses.

"(3) The Secretary shall issue regulations that require each employer covered by this Act to report to the Secretary each work-related death of an employee of the employer immediately upon knowledge of the employer, and to report each serious incident that results in the hospitalization of two or more employees of the employer within 24 hours of the incident.

"(4) Data collected under this subsection shall be publicly available in a form suitable for further statistical analysis.".

### SEC. 802. EMPLOYEE REPORTED ILLNESSES.

Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended—

(1) by striking "deaths, injuries and illnesses" and inserting "deaths and injuries"; and

(2) by inserting before the period at the end the following: ", and work related illnesses and suspected work related illnesses (including a work related illness reported by an employee or an employee's physician), unless the employer makes a reasonable determination that the illness is not work related".

### SEC. 803. EMPLOYEE ACCESS.

Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended by adding at the end the following new sentence: "The records and reports required under this section shall be made available to the Secretary, the Secretary of Health and Human Services, to employees and to employee representatives.".

## TITLE IX—NIOSH

### SEC. 901. HAZARD EVALUATION REPORTS.

Section 20(a)(6) (29 U.S.C. 669(a)(6)) is amended—

(1) in the second sentence, by inserting "and whether any hazardous condition or harmful physical agent found in the place of employment poses a risk to exposed employees" after "as used or found"; and

(2) by inserting after the second sentence, the following new sentence: "If a determination is not made within 6 months of the receipt of a request, the Secretary shall provide the employer and affected employees with an interim report on the known or suspected hazards and recommendations for control and an estimate of the time that a final determination will be made.".

**SEC. 902. SAFETY RESEARCH AND EVALUATIONS.**

Section 20(a) (29 U.S.C. 669(a)) is amended by adding at the end thereof the following new paragraph:

"(8) The Secretary of Health and Human Services shall identify major factors contributing to occupational injuries and fatalities through accident investigations, and epidemiological research.".

**SEC. 903. INFORMATION AND EDUCATION ABOUT OCCUPATIONAL ILLNESSES.**

Section 20(a) (29 U.S.C. 669(a)) (as amended by section 902) is further amended by adding at the end the following new paragraph:

"(9) The Secretary of Health and Human Services shall carry out a program to identify and notify employees at increased risk of occupational illnesses, injuries, and fatalities, including public information and education programs for groups of workers at increased risk. In carrying out the program, the Secretary shall notify subjects of studies conducted or funded by the Secretary who are found to be at increased risk and shall make recommendations on appropriate medical surveillance for groups of employees at increased risk.".

**SEC. 904. CONTRACTOR RIGHTS.**

Section 20(b) (29 U.S.C. 669(b)) is amended by inserting after "Secretary of Health and Human Services" the following: "or the designees or contractors of such Secretary.".

**SEC. 905. NATIONAL SURVEILLANCE PROGRAM.**

Section 20 (29 U.S.C. 669) is amended by adding at the end thereof the following new subsection:

"(f)(1) The Secretary of Health and Human Services, acting through the National Institute for Occupational Safety and Health, shall (in cooperation with other agencies of the Department of Health and Human Services and the Secretary of Labor) establish a national surveillance program to identify cases of occupational illnesses, fatalities, and serious injuries. In conducting the national surveillance program, the Secretary of Health and Human Services shall coordinate the activities of the Secretary with State health agencies and Federal and State workers' compensation agencies.

"(2)(A) The Secretary of Health and Human Services shall collect data each year on the number and characteristics of all occupational fatalities, selected occupational illnesses, and selected occupational injuries.

"(B) In selecting occupational diseases and injuries for the collection of data under subparagraph (A), the Secretary of Health and Human Services shall consider the known frequency of the disorder, the severity of the disorder, and the size of the population at risk.

"(3) The Secretary of Health and Human Services shall prepare reports and analysis of fatalities, occupational diseases, and injuries collected under the national surveillance program and transmit the information to the Secretary of Labor, State health agencies, employers, employees, and other interested parties.

"(4) The Secretary of Health and Human Services may issue regulations to require an employer, through a physician or other health professional employed by or under contract to the employer, to report information on occupational fatalities, illnesses and injuries 'n order to carry out the provisions of this subsection.".

**SEC. 906. ESTABLISHMENT OF NIOSH AS A SEPARATE AGENCY WITHIN PUBLIC HEALTH SERVICE.**

The second sentence of section 22(b) (29 U.S.C. 671(b)) is amended by inserting after "The Institute shall be" the following: "established as a separate agency within the Public Health Service and be".

## TITLE X—STATE PLANS

**SEC. 1001. STATE PLAN COMMITTEES AND PROGRAMS.**

Section 18(c) (29 U.S.C. 667(c)) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting a comma; and

(3) by adding at the end the following new paragraph:

"(9) provides for the development of safety and health programs, training programs, and safety and health committees that are at least as effective as those required under section 27 and 28, and".

**SEC. 1002. ACCESS TO INFORMATION; EMPLOYEE RIGHTS.**

Section 18(c) (29 U.S.C. 667(c)) (as amended by section 1001) is further amended by adding at the end thereof the following new paragraph:

"(10) provides for reporting requirements, protection of employee rights, and access to information that are at least as effective as those required under this Act or other Federal laws which govern access to information related to this Act.".

**SEC. 1003. COMPLAINTS AGAINST A STATE PLAN.**

Section 18 (29 U.S.C. 667) is amended—

(1) in the third sentence of subsection (e)—

(A) by inserting after "preceding sentence" the following: "and except as provided in subsections (f), (i) and (j)"; and

(B) by striking out "(except for the purpose of" and all that follows through "of this section)"; and

(2) by adding at the end thereof the following new subsection:

"(i)(1) If the Secretary receives a written complaint from an employer, employee, or employee representative that a State is deficient in its compliance with a provision of its State plan and the Secretary determines that there are reasonable grounds to believe that such a deficiency exists, the Secretary shall promptly investigate any such complaint. Complaints that allege a deficiency in an enforcement action by a State shall be investigated not later than 30 days after the receipt of such complaint.

"(2) The Secretary shall, not later than 30 days after the completion of an investigation under paragraph (1), transmit in writing to the State and to the complainant the findings of such investigations and recommendations for the correction of any deficiency that is identified. If the Secretary determines there are no reasonable grounds to believe that a deficiency exists the Secretary shall notify the complainant in writing of such determination.

"(3) Not later than 30 days after the receipt of a finding transmitted under paragraph (2), the State shall respond to the Secretary in writing concerning what action the State has taken in response to the Secretary's findings and recommendations.

"(4) If after receipt of the response of the State under paragraph (3), the Secretary believes a serious violation of the Act exists for which the State has failed to issue a citation, the Secretary shall with reasonable promptness issue a citation.".

**SEC. 1004. ACTION AGAINST STATE PLAN.**

Section 18(f) (29 U.S.C 667(f)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by redesignating the second sentence as paragraph (3) and indenting such appropriately;

(3) by inserting after paragraph (1), the following new paragraph:

"(2)(A) If the Secretary at any time finds reasonable grounds to believe that a State has failed to comply substantially with any provision of the State plan or any assurance contained therein, the Secretary shall give notice to the State of the deficiencies and shall allow 6 months for the correction of the deficiencies.

"(B) If after 6 months the Secretary determines that the State has not corrected the deficiencies and that grounds for withdrawing approval of the State plan exist, the Secretary shall institute proceedings pursuant to paragraph (3) for the withdrawal of approval of the plan, unless the Secretary determines in writing that exceptional circumstances exist that justify a decision not to institute such proceedings."; and

(4) by adding at the end thereof the following new paragraph:

"(4) During the pendency of proceedings pursuant to paragraph (3), the Secretary shall exercise jurisdiction, concurrent with the State, over the safety and health issues that are subject to the State plan.".

**SEC. 1005. APPLICATION OF FEDERAL STANDARDS.**

Section 18 (29 U.S.C. 667) (as amended by section 1003) is further amended by adding at the end thereof the following new subsection:

"(j) In the event a State, within 6 months after the promulgation of a safety and health standard by the Secretary under section 6, fails to adopt or promulgate a standard that is at least as effective as the Federal standard, the State shall enforce the Federal standard until a State standard is in effect that is at least as effective as the Federal standard.".

**SEC. 1006. STATE PLAN CONFORMING AMENDMENTS.**

Section 18 (29 U.S.C. 667) (as amended by section 1003 and 1005) is further amended by adding at the end thereof the following new subsection:

"(k) Each State which is exercising authority to operate a State safety and health plan under section 18 shall within 1 year of the effective date of this subsection modify the plan to conform with the requirements of this Act.".

## TITLE XI—VICTIM'S RIGHTS

**SEC. 1101. OCCUPATIONAL SAFETY AND HEALTH HAZARDS VICTIM'S RIGHTS**

(a) IN GENERAL.—Section 29 is amended to read as follows:

**"SEC. 29. OCCUPATIONAL SAFETY AND HEALTH HAZARDS VICTIM'S RIGHTS**

"(a) DEFINITION.—As used in this section, the term "victim" means—

"(1) an employee who has sustained a work-related injury or illness which is the subject of an inspection or investigation conducted under section 8(i); or

"(2) a family member of an employee, if—

"(A) the employee is killed as a result of a work-related injury or illness which is the subject of an inspection or investigation conducted under section 8(i); or

"(B) the employee sustains a work-related injury which is the subject of an inspection

or investigation conducted under section 8(i), and the employee cannot reasonably exercise the rights of the employee under this section.

"(b) VICTIM'S RIGHTS.—Notwithstanding any other provision of law, on request, a victim shall be afforded the right to—

"(1) meet with the Secretary or an authorized representative regarding the inspection or investigation conducted under section 8(i) concerning the employee's injury, illness or death, prior to the Secretary's decision to issue a citation or take no action; and

"(2) receive at no cost, a copy of any citations or reports, issued as a result of the inspection or investigation, at the time of issuance, and be informed of any notice of contest filed under section 10 that shall be accompanied by an explanation of the rights of employee and employee representatives to participate in proceedings conducted under section 10.

For the purposes of section 10, a victim shall have the same rights as an employee.

"(c) DISCUSSION ON MODIFICATION OF CITATION.—Prior to entering into an agreement to withdraw or modify a citation issued as a result of an inspection of a fatality or serious incident conducted under section 8(i), on request, the Secretary shall provide an opportunity to the victim to appear and make a statement before the parties conducting the settlement negotiations.

"(d) REMEDIES.—For a violation of this section, in addition to any other remedies that might be available to a victim under Federal or State law, a victim shall be entitled to—

"(1) declaratory relief;

"(2) injunctive relief;

"(3) any costs incurred by the victim in securing the documents referred to in subsections (b)(2) and (c); and

"(4) reasonable attorneys fees and costs.

"(e) NOTIFICATION.—The Secretary shall take reasonable actions to inform victims of their rights under this section.".

(b) EFFECT OF AMENDMENT.—The amendment made by subsection (a) shall not be construed to affect the amendments made by section 29 of the Occupational Safety and Health Act of 1970 as such section existed on the date of enactment of such Act.

## TITLE XII—EFFECTIVE DATE

**SEC. 1201. EFFECTIVE DATE.**

This Act and the amendments made by this Act shall become effective on the date that is 90 days after the date of enactment of this Act.

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SECTION-BY-SECTION ANALYSIS OF THE COMPREHENSIVE OCCUPATIONAL SAFETY AND HEALTH REFORM ACT

SECTION 1. SHORT TITLE

The legislation may be cited as the "Comprehensive Occupational Safety and Health Reform Act".

SECTION 2. FINDINGS AND PURPOSE

Congress finds that despite progress made in reducing the rates of work-related deaths, injuries and exposures to toxic substances since 1970, such rates remain unacceptably high. In addition, employers and employees are insufficiently involved in joint efforts to identify and correct occupational safety and health hazards, and lack sufficient OSH training; standard-setting, enforcement, and data collection are inadequate; and millions of American workers lack adequate federal occupational safety and health protection.

The purposes of the legislation are to increase the joint participation of employers and employees in identifying and correcting workplace hazards, to improve standard-setting, enforcement and data collection, and to ensure adequate federal occupational safety and health protection for all workers.

SECTION 3. OSHA AMENDMENTS

The legislation amends the Occupational Safety and Health Act of 1970 ("the Act") (29 U.S.C. section 651 et seq.).

*Title I—Safety and Health Programs*

SECTION 101. SAFETY AND HEALTH PROGRAMS

Section 101 requires employers to establish and maintain occupational safety and health ("OSH") programs to reduce or eliminate hazards and to prevent injuries and illnesses to employees. Each program must be in writing, and must provide for (a) identification and correction of hazards, (b) employee training, education, and participation in the OSH program (to be considered as hours worked), (c) procedures for responding to and investigating OSH incidents, (d) designation of an employer OSH representative, and (e) OSH procedures for multi-employer worksites.

Within one year of enactment, DOL is required to issue regulations concerning employer OSH programs. DOL is authorized to modify the application of this section's requirements to classes of employers if DOL determines that employees' OSH protection would not be reduced.

The legislation requires employers to provide employee OSH training, including training for new employees and employees who face changed working conditions or modifications in applicable OSH regulations and standards, as well as annual refresher training. OSH committee members (as described in Section 201) must receive special training.

*Title II—Joint Safety and Health Committees*

SECTION 201. JOINT SAFETY AND HEALTH COMMITTEES

Section 201 requries employers with more than 10 employees to establish joint employer-employee OSH committees. Each committee shall have the right to (a) review the employer's OSH program and OSH records, (b) conduct inspections and employee interviews periodically and in response to specific incidents, (c) observe OSHA inspections and exposure monitoring by the employer, and (d) make advisory recommendations to the employer. Time spent on committee activities shall be considered as time worked.

Although this section requires employers to establish a committee at each of its worksites, DOL is authorized to modify this requirement for worksites with fewer than 11 employees, multi-employer worksites, and employees who do not work at fixed locations.

For worksites of between 11 and 50 employees, the committee must include at least one employee representative. For worksites of between 51 and 99 employees, the committee must include at least two employee representatives. Committees at larger workstites must include an additional representative for each additional 100 employees at such worksites (up to a maximum of six).

Employer-designated representatives on the Committee are not to exceed employee representatives in number. In non-union settings, employee representatives are to be selected from among non-managerial employees by secret ballot election. In union settings, the exclusive bargaining agent shall designate such representatives. In mixed settings, each represented group (plus one residual group of unrepresented employees) shall have proportional representation on the committee, except that each group of 11 or more employees shall have at least one representative.

DOL is required to issue final regulations regarding OSH committees within one year of the effective date of the legislation. DOL's regulations must provide procedures (where applicable) for election of employee representatives, and require employers to make necessary facilities and materials available to committees.

*Title III OSHA—coverage*

SECTION 301. PUBLIC EMPLOYEES

Section 301 provides comprehensive OSHA coverage to all federal, state and local employees for the first time.

SECTION 302. CEDING JURISDICTION TO OTHER FEDERAL AGENCIES

OSHA currently does not apply to private sector employees covered by another federal agency's OSH regulations. Section 302 replaces this rule, requiring DOL to certify, for each specified hazard as to which it wishes to cede jurisdiction, that another federal agency has an equally effective standard or regulation regulating that hazard. (Employees covered by MSHA, however, are expressly exempted.) This section also sets forth procedures which permit affected individuals to seek a rescission of a certification before DOL, as well as judicial review of DOL certifications and refusals to rescind a certification.

SECTION 303. COVERAGE OF DOE NUCLEAR FACILITIES

Section 303 specifically extends OSHA coverage to federal nuclear facilities under the jurisdiction of the Department of Energy.

SECTION 304. CLARIFICATION OF GENERAL DUTY CLAUSE

Section 304 makes clear that OSHA's general duty clause extends to multi-employer worksites, where hazardous conditions of practices may affect not only the employer's own employees but also other employees working at the site.

*Title IV: OSHA standards*

SECTION 401. STANDARD-SETTING PROCEDURES

Section 401 sets forth procedures regarding OSHA's standard-setting process. First, if an advisory committee, NIOSH, or EPA recommends (or any interested person petitions for) the promulgation, modification or revocation of a standard, DOL must publish a response within 90 days, and must issue a proposed rule within 12 months unless it concludes that no action is warranted.

Following the issuance of a proposed rule, DOL must permit a public comment period of at least 30 days, and must issue a final rule within 180 days after the comment period or hearing.

Section 401 also permits affected persons to seek judicial review of a decision by DOL not to propose a rule to promulgate, modify or revoke a standard as requested in a recommendation or petition. Such a decision may be set aside if it is found to be arbitrary, capricious, or an abuse of discretion. Affected persons may also seek judicial review if DOL fails to act within the time periods specified in this section, to compel DOL to take any action unlawfully withheld or unreasonably delayed.

Finally, Section 401 makes clear that challenges to the validity of a standard must be brought either within 60 days of the issuance of a final rule (as provided under section 6(f) of the Act), or by petitioning for the modification or revocation of a standard through the process set forth above.

SECTION 402. CONSIDERATIONS IN STANDARD-SETTING

Section 402 amends the definition of "occupational safety and health standard" to mean a standard which addresses a significant health or safety risk by requiring employers to adopt practices or processes that most adequately assure, to the extent feasible, a safe and healthful workplace.

SECTION 403. RECORDING WORK-RELATED ILLNESSES

Section 403 requires DOL standards to provide for recording or reporting of work-related illnesses determined as a result of medical examinations conducted under such standards.

SECTION 404. PUBLIC DISCLOSURE OF STANDARD-SETTING COMMUNICATIONS

Section 404 requires DOL to place all communications regarding the standard-setting process in the public record.

SECTION 405. REVISION OF PERMISSIBLE EXPOSURE LIMITS

Section 405 requires NIOSH to evaluate, on a regular basis, whether exposure limits for toxic materials and harmful physical agents should be modified or established. NIOSH must also transmit to DOL, at least every 3 years, recommendations as to exposure limits which should be modified or established.

DOL is required to publish such recommendations, allow 30 days for public comment, issue a proposed rule responding to such recommendations within 6 months of receiving them, and issue a final rule within 1 year of issuance of the proposed rule. DOL must explain its reasons for adopting any proposed or final exposure limit which differs from NIOSH's recommendations.

SECTION 406. EXPOSURE MONITORING AND MEDICAL SURVEILLANCE STANDARDS

Section 406 requires DOL to issue final standards on exposure monitoring and medical surveillance programs within 2 years of the legislation's effective date. The exposure monitoring standards must provide for formal exposure assessments, regular monitoring, a written compliance plan to reduce excessive exposures, employee notification of excessive exposures, recordkeeping, and participation of the joint OSH committee. The medical surveillance standards must provide for identification of at-risk employees, periodic medical examinations of such employees, notification to employees of examination results, certification of health care providers to perform medical examinations, confidentiality of personal employee medical records, prohibition of discrimination against any employee based on examination results, recordkeeping, and participation of the joint OSH committee.

SECTION 407. ERGONOMIC HAZARDS STANDARD

Section 407 requires DOL to issue a final standard on ergonomic hazards within 1 year of the legislation's effective date. The standard must provide for identificaiton of ergonomic hazards, a program for employees exposed to such hazards (including training and education of such employees), control measures to reduce such hazards (including an effective medical management program), recordkeeping, and participation of the joint OSH committee.

SECTION 408. ADDITIONAL STANDARDS

Section 408 requires DOL to issue certain additional standards by the dates listed below:

November 30, 1991, blood borne pathogens.

December 31, 1991, permissible exposure limits (update for construction, maritime, and agriculture); electric power; logging; head and foot protection; walking and working surfaces; hazardous materials; and motor vehicles.

June 30, 1992, cadmium; confined space entry, asbestos (remand); hazardous waste training program accreditation; and methylene chloride.

December 31, 1992, respiratory protectiopn; 1.3-butadiene; scaffaolds; fall protection; and glycol ethers.

December 31, 1993, indoor air quality; and longshoring.

*Title V: Enforcement*

SECTION 501. EMPLOYEE PARTICIPATION IN INSPECTIONS

Section 501 provides that time spent by an employee accompanying an OSHA representative on an inspection, as permitted by the Act, shall be treated as hours worked.

SECTION 502. IMMINENT DANGER AND SERIOUS VIOLATION COMPLAINTS

The Act requires DOL to make a special inspection upon receipt of a complaint from an employee or employee representative alleging an imminent danger or a serious violation which threatens physical harm, if DOL finds reasonable grounds to believe that such danger or violation exists. Section 502 extends this requirement to imminent dangers and violations DOL learns about from other sources, and makes clear that the complaint may allege a serious violation of either a standard or a provision of the Act.

SECTION 503. NOTIFICATION OF DOL FINDING OF NO REASONABLE GROUNDS

Section 503 requires DOL to notify the complainant within 30 days of the complaint if it concludes that there are no reasonable grounds to believe that such danger or violation exists.

SECTION 504. SPECIAL EMPHASIS INSPECTION PROGRAM

Section 504 requires DOL to establish and carry out a special emphasis inspection program targeting high-risk industries or operations, and to report annually to Congress thereon.

SECTION 505. DOL INVESTIGATION OF SERIOUS INCIDENTS

Section 505 requires employers to report any work-related death or serious incident (requiring hospitalization of at least two employees) to DOL, and requires DOL to investigate such incidents.

SECTION 506. ABATEMENT PROCEDURES

Section 506 revises the Act's abatement procedures by providing a general rule that the period permitted for correction of a violation shall begin to run from the date of receipt of the citation. An exception allows an employer to delay abatement until the entry of a final order by the OSH Review Commission if an employer contests a citation in good faith, unless (a) the employer contests only the proposed penalty or the characterization of the violation, or (b) the violation is serious and presents a substantial safety or health risk of harm.

Section 506 further provides that an employer charged with a serious violation which presents a substantial safety or health risk, and thus subject to an abatement period which begins to run upon issuance of a citation, may seek a delay or suspension of such period from the OSH Review Commission. In the event of such a request, the Commission shall expedite the proceeding and may modify the requirement of immediate commencement of the abatement period if it determines that such requirement was unreasonable under the circumstances.

This section also requires employers cited for serious, willful or repeat violations to verify to DOL the abatement of such violations within 30 days of the expiration of the abatement period, to provide appropriate documentary evidence to establish such verification, and to post a notice of abatement at the place of the violation. DOL is required to issue regulations regarding abatement verification and posting within one year of enactment.

SECTION 507. EMPLOYEE CONTEST OF CITATIONS

To conform the bases upon which employers and employees may contest citations, Section 507 makes clear that employees may do so based on the characterization of the violation (non-serious, serious, willful or repeated), the sections of the Act or regulations listed as the basis for the citation, or the proposed penalty.

SECTION 508. EMPLOYEE PARTICIPATION

The Act currently allows employees to participate in OSH Review Commission hearings. Section 508 allows employees to participate in other OSHRC proceedings as well.

SECTION 509. EMPLOYEE CONTEST OF DOL-EMPLOYER AGREEMENTS

Section 509 requires DOL to notify affected employees if it intends to modify or withdraw a citation as a result of an agreement with the cited employer. Such employees may challenge the agreement within 15 days if it fails to effectuate the purposes of the Act.

If DOL rejects the challenge, such employees may (within 15 days) seek an OSHRC hearing. DOL is precluded from carrying out the agreement if the OSHRC determines that it would not effectuate the purposes of the Act.

SECTION 510. IMMINENT DANGERS

Section 510 requires OSHA inspectors, upon discovery of a workplace hazard which poses an imminent danger, to notify the employer and request immediate abatement of the hazard. If the employer refuses to abate the hazard, the inspector (upon approval by DOL) may immediately post a notice or tag identifying the hazard as posing an imminent danger. Employers who fail to abate such a tagged hazard, or remove all employees from exposure thereto, shall be fined between $10,000 and $50,000 per day for non-abatement. In addition, employers are prohibited from discriminating in any manner against an employee who refuses to perform a duty that would expose him or her to the tagged hazard.

SECTION 511. VIOLATIONS OF OSH PROGRAM AND COMMITTEE REQUIREMENTS

Section 511 makes clear that DOL may issue citations and assess penalties for violations of new sections 27 (OSH programs) and 28 (OSH committees).

SECTION 512. OSHA CRIMINAL PENALTIES

Section 512 expands the maximum criminal penalties for violations of the Act. The maximum imprisonment penalties are increased as follows:

Willful violation that causes death: increased from 6 months to 10 years (first conviction) and 1 year to 20 years (additional convictions).

Advance notice of an inspection: increased from 6 months to 2 years.

False statement: increased from 6 months to 1 year.

Willful violation that causes serious injury: a new criminal offense is created with maximum imprisonment of 5 years (first conviction) and 10 years (additional convic-

tions). "Serious bodily injury" is defined to mean bodily injury that involves a substantial risk of death, protracted unconsciousness, protracted and obvious physical disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

In 1984, the maximum criminal fine limits (ranging from $1,000 to $20,000) for OSHA violations were superceded by the higher maximum criminal fine limits ($250,000 per individual, $500,000 per organization) contained in the Sentencing Reform Act of 1984 (18 U.S.C. section 3571). Section 512 clarifies the applicability of these higher limits to OSHA violations. In addition, this section provides that individuals convicted of OSHA offenses will be personally liable for any criminal fines assessed against them.

*Title VI: Anti-Discrimination Protection*

SECTION 601. ANTI-DISCRIMINATION PROVISIONS

Section 601 extends the coverage of the Act's anti-discrimination provisions to (a) an employee's reporting of injuries or unsafe conditions, and (b) an employee's refusal, after first unsuccessfully asking the employer to eliminate an unsafe condition, to perform duties which the employee reasonably believes would expose him or her to a bona fide danger of injury or serious impairment of health.

Section 601 also revises the procedures for the handling of discrimination complaints. The period for filing such complaints is increased from 30 to 180 days following the alleged discrimination. DOL is required to investigate the complaint and report findings within 60 days.

If DOL issues a preliminary order finding a violation, such order becomes final unless within 30 days a party files objections thereto and request a hearing, in which case DOL is required to issue a final order within 120 days of such hearing. DOL is authorized to (a) require employers to correct violations and reinstate discrimination victims, (b) award back pay, compensatory damages, costs and expenses, and (c) seek judicial enforcement of final orders if necessary. Affected persons may seek judicial review in an appropriate U.S. Court of Appeals within 60 days following the issuance of a final order.

Finally, Section 601 provides that the legal burdens of proof set forth in the Whistleblower Protection Act of 1989, 5 U.S.C. section 1221(e), shall apply to adjudication of OSHA anti-discrimination complaints.

*Title VII: Training*

SECTION 701. TRAINING AND EDUCATION

Section 701 requires DOL to develop model curricula, training materials and educational programs for employees and OSH committee members.

*Title VIII: Reporting and Data Collection*

SECTION 801. DATA COLLECTION

Section 801 requires DOL to gather, and make publicly available, data in order to identify (a) high-risk industries, employers, operations, and occupations, (b) causes of injuries and illnesses, and (c) workers' compensation costs. DOL must also issue regulations requiring employers to report work-related deaths immediately to DOL, and to report serious incidents (requiring hospitalization of 2 or more employees) to DOL within 24 hours.

SECTION 802. ILLNESS RECORDS

The Act requires employers to keep records and file periodic reports on work-related deaths, injuries and illnesses. Section 802 adds to this list illnesses suspected to be work-related, unless the employer makes a reasonable determination that the illness is not work-related.

SECTION 803. ACCESS TO RECORDS

Section 803 provides that DOL, HHS, and employees shall have access to employer OSH records.

*Title IX: NIOSH*

SECTION 901. HAZARD EVALUATION REPORTS

Section 901 requires NIOSH, after receiving a request for a determination as to the toxicity of a workplace substance, or the safety or health risk posed by a condition or physical agent, to provide a determination as soon as possible, and to provide an interim report if it cannot make a determination within 6 months.

SECTION 902. RESEARCH

Section 902 requires NIOSH to identify major factors contributing to work-related deaths and injuries through accident investigations and epidemiological research.

SECTION 903. EMPLOYEE NOTIFICATION PROGRAM

Section 903 requires NIOSH to establish a program to idetnify and notify employees at increased risk of suffering work-related deaths, injuries and illnesses, and to make recommendations as to medical surveillance of such employees.

SECTION 904. DOL RIGHT OF INSPECTION

Section 904 makes clear that NIOSH's authority to inspect records extends to its designees and contractors.

SECTION 905. NATIONAL SURVEILLANCE PROGRAM

Section 905 requires NIOSH to establish a national surveillance program to identify work-related deaths, injuries and illnesses, and to provide reports on the data collected pursuant to such program to DOL. This section also authorizes HHS to require employers to provide such data to NIOSH.

SECTION 906. REDESIGNATION OF NIOSH

NIOSH currently operates under the auspices of the Center for Disease Control. Section 906 provides for the redesignation of NIOSH as a separate agency within the Public Health Service.

*Title X: State Plans*

SECTION 1001. STATE PLAN COMMITTEES AND PROGRAMS

Under Section 1001, state plans must require employers to establish OSH programs and committees at least as effective as those required under this legislation.

SECTION 1002. STATE PLAN REQUIREMENTS

Under Section 1002, state plans must include reporting, anit-discrimination, and access to information provisions which are at least as effective as those provided under this legislation or other applicable federal laws.

SECTION 1003. COMPLAINTS AGAINST STATE PLANS

Section 1003 requires DOL to investigate complaints against state plans promptly if it finds reasonable grounds to believe that a state has not complied with its plan. (Complaints regarding enforcement must be investigated within 30 days.) DOL is further required to transmit findings to the complainant within 30 days of the completion of its investigation. If DOL finds that a state is not in compliance with its plan, it must so notify such state, and within 30 days the state must inform DOL of its response, DOL is also required to issue citations for serious violations if the state has failed to do so.

SECTION 1004. WITHDRAWAL OF STATE PLAN APPROVAL

Section 1004 provides that if DOL finds reasonable grounds to believe that a state has failed to comply substantially with its plan, it shall give the state 6 months to correct any deficiencies. If the state fails to correct such deficiencies within 6 months, DOL shall commence proceedings to withdraw approval of such state's plan, unless exceptional circumstances exist. During the pendency of any proceedings to withdraw approval of a state plan, DOL shall exercise concurrent jurisdiction with the state plan.

SECTION 1005. ADOPTION OF FEDERAL STANDARDS

Section 1005 provides that when a federal standard is adopted, state plans must either adopt an equally effective standard within 6 months or adopt the federal standard until such time as a comparable standard is adopted.

SECTION 1006. CONFORMING STATE PLANS

Section 1006 permits states 1 year from the effective date of the legislation to bring their plans into compliance with the legislation.

*Title XI: Victims' Rights*

SECTION 1101. VICTIMS' RIGHTS

Section 1101 extends certain rights to employees who suffer injuries or illnesses on the job, and to the families of employees killed on the job. If DOL investigates the incident, such individuals are entitled to (a) meet with DOL prior to DOL's decision as to whether or not to issue a citation, (b) receive copies of citations, reports, and notices of contest, (c) participate in OSHRC proceedings, and (d) meet with DOL and the employer before any settlement is agreed to.

*Title XII: Effective Date*

SECTION 1201. EFFECTIVE DATE

Section 1201 provides an effective date for this legislation 90 days after enactment.

Mr. METZENBAUM. Mr. President, I am proud to join with Senator KENNEDY today as an original cosponsor of the Comprehensive Occupational Safety and Health Reform Act.

Twenty-one years ago, Congress enacted the Occupational Safety and Health Act with the following purpose: "To assure so far as possible every working man and woman in the Nation safe and healthful working conditions."

Since then, we have made some progress toward achieving that goal. Employers have become more aware of safety and health problems, and many employers have tried to address those problems.

But our promise of a safe and healthy workplace for all American workers remains unfulfilled. Two decades after passage of the act, injury and death rates remain shockingly high, and have been rising since 1983. The American workplace is becoming a "little shop of horrors."

In 1989, the most recent year for which statistics are available, 10,400 workers were killed on the job, an average of 40 workers each work day. At this rate, an American worker is killed on the job every 36 minutes.

Another 1,700,000 working men and women suffered disabling injuries on the job in 1989, an average of 6,538 workers each work day. At this rate, a working man or woman in this country

suffers a disabling injury on the job every 13 seconds.

Hundreds of thousands more working men and women died or became disabled as a result of job-related illnesses and diseases such as cancer, lead poisoning, and respiratory disease. At present, we lack even the data to know how bad this problem really is.

This level of carnage is completely unacceptable. These are not just statistics—these are our mothers and fathers, our sons and daughters, our wives and husbands. The fates they are suffering are unspeakably horrible: they are being crushed by falling walls, killed in fireball explosions, dismembered by machines, asphyxiated by gas, buried alive in collapsing trenches, electrocuted, burned, and crippled or killed by disease.

The simple fact is that many of these tragedies are preventable. We must do more to fulfill OSHA's original promise of providing safe and healthy working conditions for every working American.

Prior to last year, when the maximum civil penalties were increased, OSHA had never been amended. The comprehensive legislation we are introducting today is long overdue. It addresses a number of major problems with the act and OSHA's enforcement scheme.

Prehaps the most fundamental problem OSHA faces is a lack of resources. OSHA has only 1,200 inspectors to enforce compliance by roughly 3.5 million employers, providing protection for some 55 million employees. Collectively, State occupational safety and health agencies have only 1,100 inspectors to enforce compliance by 2.3 million employers, providing protection for 34 million workers.

These numbers mean that even the most high-risk employers are not likely to see an OSHA inspector show up to inspect their facilities. Indeed, as the number of employers and workers subject to OSHA's jurisdiction has grown, the agency's funding has shrunk in real dollars, with the agency receiving $248. million in fiscal year 1989.

We must recognize that large increases in OSHA's funding are unlikely given our current fiscal problems. OSHA's enforcement strategy will continue to be based largely on voluntary compliance by employers and workers. But employers and workers often lack adequate information about workplace health and safety hazards and how best to abate them.

The bill we are introducing today will dramatically improve the cooperative efforts of employers and employees to address workplace safety and health issues. First, the bill requires employers to establish occupational safety and health programs to reduce or eliminate hazards, and to prevent injuries and illnesses to employees. Employee training and education will be provided as part of these programs. OSHA is authorized to modify the applicability of these requirements to classes of employers provided that employees' safety and health protection is not reduced.

The bill also requires employers of 11 or more emplolyees to have safety and health committees made up of an equal number of employee and employer representatives. In unionized settings, employee representatives are to be designated by the employees' bargaining representative; otherwise they are to be elected by employees. Committees are authorized to review the employer's safety and health program, conduct inspections, and make advisory recommendations to the employer.

Many employees refrain from blowing the whistle on unsafe conditions for fear of losing their jobs or suffering other reprisals. The bill strengthens the act's anti-discrimination provision, by adopting protections and remedies modeled on the Surface Transportation Act. Employee reporting of unsafe conditions is protected, as well as refusals to work where the employee reasonably believes that there is a bona fide danger of injury or serious impairment of health.

The bill also revises the procedures for the handling of discrimination complaints, and authorizes OSHA to order reinstatement and assess back pay, compensatory damages and attorneys' fees against violators.

In addition to increasing the involvement and cooperation of employers and employees, we must also make sure that OSHA gets the most impact in terms of reducing work-related deaths, injuries and illnesses out of every dollar of funding it gets. Two decades of experience have exposed many problems with OSHA's standard-setting process and enforcement scheme. This legislation strengthens OSHA's authority in a number of respects.

OSHA's existing standard-setting process is woefully inadequate to keep up with the thousands of potentially hazardous new chemicals and other physical agents introduced into the American workplace annually. As of 1989, OSHA standards regulated only about 630 substances, fewer than 30 of which were regulated by comprehensive standards providing for such things as exposure monitoring and medical surveillance.

Even when OSHA has undertaken to provide a standard for a given safety or health hazard, its response is often inadequate. In 1976, for example, a Presidential task force determined that OSHA's 1971 machine guards standards covered only 15 percent of the machine types then in use. Fifteen years later, that standard has yet to be updated.

Moreover, many OSHA standards under development are delayed for years. For example, OSHA spent 9 years developing a lockout/tagout standard governing protections against the sudden activation of machinery, beginning consideration in 1980 and issuing a final standard in 1989. During that decade of delay, over 1,000 Americans lost their lives from accidents that could have been prevented, by OSHA's own calculations, had a standard been in place.

The bill streamlines OSHA's standard-setting process, shortening it to roughly 18 months. OSHA is also required to address certain specific hazards already on the agency's regulatory agenda—including exposure monitoring, medical surveillance, and ergonomic hazards—within certain time frames.

There are several significant problems with the act's hazard abatement procedures. First, employers can delay abatement of a health or safety hazard simply by contesting a citation issued by OSHA. That process can take months or years to complete. The bill would require employers to abate serious violations of the act when a citation is first issued if there is a substantial risk of harm. Employers seeking review of the citation in such cases would be entitled to expedited consideration of the review proceeding.

Similarly, if an OSHA inspector finds an imminent danger which could reasonably be expected to cause death or serious injury, the employer need not abate the hazard until the agency obtains a court order. The bill authorizes OSHA to "tag" imminent dangers immediately if the employer refuses to abate them, and to fine employers between $10,000 and $50,000 a day for nonabatement.

In addition, OSHA does few follow-up inspections to verify abatement, relying instead on inverified employer statements. The bill requires employers to provide documentary evidence to verify abatement, and to post notices of abatement.

This bill also addresses the agency's enforcement through the act's criminal provisions. Although OSHA has handed out large penalties in a number of cases—by citing employers on an instance-by-instance approach—the agency's general practices in assessing civil penalties and in seeking criminal prosecutions leave much to be desired. For example, in fiscal year 1988, the average assessed civil penalty for a serious violation was only $261. I hope that Congress' action last year in raising the limits of permissible civil penalties will produce meaningful fines which fulfill their deterrent purpose.

OSHA's use of the act's criminal penalties provisions has been even worse than the agency's use of civil penalties. In the past 2 decades, according to GAO, the agency has referred only 57 cases to the Department of Justice for criminal prosecution. The Department of Justice prosecuted less than half of these cases and obtained convictions in

only 14 cases. By comparison, the State of California's OSH agency referred 92 cases for criminal prosecution in 1985–86 alone, and the State filed charges in 41 cases.

Even when OSHA does pursue criminal prosecutions, the agency typically seeks minimal monetary penalties. The Department of Justice has concluded that the Crime Control Act of 1984, which increased criminal fines for willful violations of Federal statutes to $250,000 for individuals and $500,000 for companies, applies to OSHA violations. Yet it appears that OSHA has yet to seek criminal sanctions under that law. This bill amends the act to send a strong message from Congress that OSHA must make meaningful use of these criminal sanctions.

Nor have OSHA and the Department of Justice sought imprisonment of egregious violators. Not a single employer had ever served time under OSHA's criminal provisions until 1989, when a convicted employer served 45 days in prison. The Department of Labor's own acting inspector general has acknowledged "an apalling lack of criminal enforcement" by OSHA.

This bill amends the act to lengthen the maximum allowable sentences, in order to encourage OSHA and the Department of Justice to make more meaningful use of the act's criminal provisions as a deterrent to violations. Current maximums are very short, allowing a 6-month maximum for a willful violation that causes a worker's death. By way of contrast, the maximum penalty under Federal law for maliciously harassing a wild burro is 1 year.

In addition, this bill for the first time permits criminal prosecution for a willful violation that causes serious bodily injury. Under present law, OSHA cannot seek a criminal prosecution against an employer for a willful violation of the act unless a fatality occurs. Thus, no matter how egregious the employer's violation is, no matter how many citations the employer has received in the past, and no matter how many workers are seriously and permanently injured as a result of the employer's actions, the Government cannot prosecute unless a worker dies.

OSHA also needs better data to enable the agency to target its limited inspection resources more effectively. Currently, OSHA attempts to target high-risk industries for inspections to make the best use of its resources. For example, manufacturing industries are targeted by their average lost workday injury rates. The construction industry is also heavily targeted by OSHA's inspection effort. But because of the small inspection force, and the size of OSHA's jurisdiction, even employers in these targeted industries are rarely inspected. Moreover, roughly a quarter of the agency's citations are for nonserious violations. This legislation requires employers to report all work-related deaths and all safety and health incidents in which two or more employees are hospitalized, and provides for improved data collection by OSHA and NIOSH, in order to improve inspection targeting.

Finally, this legislation extends the act's coverage in a number of respects. First, a long-standing gap in Federal occupational safety and health law is filled by extending coverage to Federal, State and local government employees. In addition, OSHA is permitted to cede private sector jurisdiction to other Federal agencies—(such as FAA—only with regard to particular hazards, and only if the alternative standard is as effective as OSHA's standard. The bill also clarifies that an employer operating at a multiemployer worksite has a duty to provide a safe workplace not just to its own employees, but to the employees of other employers operating at the site as well.

I am proud to stand here with Senator KENNEDY as we begin this effort. In the coming months, we intend to hold a number of hearings in order to explore these problems, and our proposed solutions, in greater depth. We hope the administration and the employer community will be active participants in this dialog.

But let us move swiftly to address these problems, so that we can fulfill Congress's promise made 21 years ago to assure every working American safe and healthful working conditions. With every day we wait, 40 more American workers die, and thousands more are disabled by injury and illness.

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By Mr. DECONCINI (for himself, Mr. INOUYE, Mr. HATCH, Mr. KENNEDY, Mr. LEAHY, Mr. BURNS, Mr. GORTON, Mr. GORE, Mr. GRASSLEY, Mr. D'AMATO, and Mr. CRANSTON):

S. 1623. A bill to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes; to the Committee on the Judiciary.

AUDIO HOME RECORDING ACT

• Mr. DECONCINI. Mr. President, I am pleased today to introduce, along with my colleagues Senators INOUYE, HATCH, KENNEDY, LEAHY, BURNS, GORTON, GORE, GRASSLEY, D'AMATO, CRANSTON, and BREAUX, the Audio Home Recording Act of 1991. This legislation finally will resolve one of the most difficult and emotional arguments in copyright law, whether individuals have the right to tape for noncommerical purposes, copyrighted material. The copyright issues raised by home taping of sound recordings and the impact on copyright owners, songwriters, preformers, music publishers, and musicians have long frustrated those of us in Congress with responsibility over these matters. The bill that my colleagues and I are introducing today represents an historic compromise among the parties of this long standing dispute. As one who has struggled with the equities of this troubling issue, I am pleased that an agreement has been reached.

I first became involved in the issue of home taping of copyrighted material in 1981. At that time, the Ninth Circuit Court of Appeals issued a decision finding that the non-commercial private video taping of broadcast television shows constituted copyright infringement. I disagreed with the decision of the Ninth Circuit and immediately introduced legislation to overturn it. It is difficult to believe that the so-called Betamax decision was announced almost 10 years ago. Over the intervening years, the issue of noncommercial home taping has remained a hotly debated one.

My purpose in introducing this legislation today is the same as it was when I introduced the Betamax bill in 1981, to protect the rights of consumers to tape copyrighted material for their own non-commercial, private use. For many years I believed that this objective could best be met through a marketplace solution. But over the last two years, I have concluded that to insure fairness to all parties, including consumers, Congress needs to make some adjustments to copyright law.

In the past, I was not persuaded that analog home taping of sound recordings posed a problem significant enough to warrant Congressional intervention. But as technology has advanced dramatically, so too has the threat. And as a result, the concerns over home taping have impeded access to these new technologies. Last Congress, I introduced legislation intended to make digital audio tape (DAT) recorders more readily available to consumers. This legislation would have required a "Serial Copy Management Systems" (SCMS) for all DAT recorders. The SCMS allows taping of original prerecorded material, but prevents subsequent copies of the copied prerecorded material. The legislation was supported by the Electronics Industry Association (EIA) and the Recording Industry Association of America (RIAA) as a first step to resolving the copyright issues raised by new technologies. However, others thought that either the agreement was not comprehensive enough, that songwriters did not have enough input into the negotiations, or both.

During the hearings on the DAT bill it became apparent that a technological limitation on successive copying could not by itself solve the problem. Moreover, Congress recognized that any solution must encompass all audio recording technologies, not just DAT. With my encouragement, and that of a number of my colleagues in

the Senate and House, all the interested parties, including those who supported last year's legislation and those who opposed it, agreed to work together to finally resolve this vexing problem. I applaud the spirit of cooperation and commitment shown by those who are part of the agreement which is reflected in the legislation being introduced today.

This legislation, the Audio Home Recording Act of 1991, benefits everyone. It benefits consumers by clearing the way for the introduction and distribution of a number of exciting new digital recording technologies. It benefits the music industry because it receives compensation. The agreement also removes the legal cloud that has hovered over home taping of sound recordings. Although the practice has become widespread, there are those who have argued that it was illegal under the copyright law. This legislation makes clear the private, non-commercial taping, of both analog and digital material, is permissible under the copyright law. As new and improved recording technologies become available, such clarification in the law becomes more important.

In addition, the SCMS insures that successive taping of copies of digitally taped audio material does not occur. The new digital recording technologies enable consumers to record a "digital clone" that is every bit as good as a record producer's own digital master. Therefore, repeated copying of the copies becomes more appealing. Compensation to the copyright owners and creators of the material is only paid on the original material. The further you get away from the original recording of the copyrighted material, the further away you get from our present longstanding system of compensation. SCMS prevents second and successive generations of copies of recorded works and thereby serves to protect the existing compensation scheme.

As I have stated in urging the different industries to come to agreement on this contentious issue, the electronics industry and the various organizations involved in the music industry need each other to succeed. This agreement clears the way for the electronics industry to begin distribution of new audio technologies, such as digital audio tape, digital compact cassettes, and recordable compact discs. Some of these new digital recording technologies have been available in other countries for years, but because of the question of whether their use constituted or facilitated copyright infringement, they have not been successfully distributed in the U.S.

I am very pleased that this historic agreement has been reached. It is fair, comprehensive and forward-looking. I am hopeful that this legislation will be enacted expeditiously, thereby clearing the way for consumer access to several exciting new technologies and putting this very contentious issue behind us.

I ask unanimous consent that a summary of the legislation and the legislation itself be printed at this point in the CONGRESSIONAL RECORD.

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

S. 1623

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Audio Home Recording Act of 1991".

**SEC. 2. IMPORTATION, MANUFACTURE, AND DISTRIBUTION OF DIGITAL AUDIO RECORDING DEVICES AND MEDIA.**

Title 17, United States Code, is amended by adding at the end the following:

"CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA

"SUBCHAPTER A—DEFINITIONS, PROHIBITION OF CERTAIN INFRINGEMENT ACTIONS, AND RULES OF CONSTRUCTION

"Sec.
"1001. Definitions.
"1002. Prohibition on certain infringement actions.
"1003. Effect on other rights and remedies with respect to private home copying or otherwise.

"SUBCHAPTER B—ROYALTY PAYMENTS

"1011. Obligation to make royalty payments.
"1012. Royalty payments.
"1013. Deposit of royalty payments and deduction of expenses.
"1014. Entitlement to royalty payments.
"1015. Procedures for distributing royalty payments.
"1016. Negotiated collection and distribution arrangements.

"SUBCHAPTER C—THE SERIAL COPY MANAGEMENT SYSTEM

"1021. Incorporation of the serial copy management system.
"1022. Implementing the serial copy management system.

"SUBCHAPTER D—REMEDIES

"1031. Civil remedies.
"1032. Binding arbitration.

"SUBCHAPTER A—DEFINITIONS, PROHIBITION OF CERTAIN INFRINGEMENT ACTIONS, AND RULES OF CONSTRUCTION

**"§ 1001. DEFINITIONS.**

"As used in this chapter, the following terms and their variant forms mean the following:

"(1) A 'digital audio copied recording' is a reproduction in a digital recording format of a phonorecord, whether that reproduction is made directly from another phonorecord or indirectly from a transmission.

"(2) A 'digital audio interface device' is any machine or device, now known or later developed, whether or not included with or as part of some other machine or device, that supplies a digital audio signal through a nonprofessional interface, as the term 'nonprofessional interface' is used in the Digital Audio Interface Standard in part I of the technical reference document or as otherwise defined by the Secretary of Commerce under section 1022(b).

"(3) A 'digital audio recording device' is any machine or device, now known or later developed, whether or not included with or as part of some other machine or device, the recording function of which is designed or marketed for the primary purpose of, and that is capable of, making a digital audio copied recording for private use, except for—

"(A) professional model products, and

"(B) dictation machines, answering machines, and other audio recording equipment that is designed and marketed primarily for the creation of sound recordings resulting from the fixation of nonmusical sounds.

"(4)(A) A 'digital audio recording medium' is any material object, now known or later developed, in a form commonly distributed for use by individuals (such as magnetic digital audio tape cassettes, optical discs, and magneto-optical discs), that is primarily marketed or most commonly used by consumers for the purpose of making digital audio copied recordings by use of a digital audio recording device.

"(B) Such term does not include any material object—

"(i) that embodies a sound recording at the time it is first distributed by the importer or manufacturer, unless the sound recording has been so embodied in order to evade the obligations of section 1011 of this title; or

"(ii) that is primarily marketed and most commonly used by consumers either for the purpose of making copies of motion pictures or other audiovisual works or for the purpose of making copies of nonmusical literary works, including, without limitation, computer programs or data bases.

"(5) 'Distribute' means to sell, resell, lease, or assign a product to consumers in the United States, or to sell, resell, lease, or assign a product in the United States for ultimate transfer to consumers in the United States.

"(6) An 'interested copyright party' is—

"(A) the owner of the exclusive right under section 106(1) of this title to reproduce a sound recording of a musical work that has been embodied in a phonorecord lawfully made under this title that has been distributed to the public;

"(B) the legal or beneficial owner of, or the person that controls, the right to reproduce in a phonorecord a musical work that has been embodied in a phonorecord lawfully made under this title that has been distributed to the public; or

"(C) any association or other organization—

"(i) representing persons specified in subparagraph (A) or (B), or

"(ii) engaged in licensing rights in musical works to music users on behalf of writers and publishers.

"(7) An 'interested manufacturing party' is any person that imports or manufactures any digital audio recording device or digital audio recording medium in the United States, or any association of such persons.

"(8) 'Manufacture' includes the production or assembly of a product in the United States.

"(9) A 'music publisher' is a person that is authorized to license the reproduction of a particular musical work in a sound recording.

"(10)(A) A 'professional model product' is an audio recording device—

"(i) that is capable of sending a digital audio interface signal in which the channel status block flag is set as a 'professional' interface, in accordance with the standards and specifications set forth in the technical reference document or established under an order issued by the Secretary of Commerce under section 1022(b);

"(ii) that is clearly, prominently, and permanently marked with the letter 'P' or the word 'professional' on the outside of its packaging, and in all advertising, pro-

motional, and descriptive literature, with respect to the device, that is available or provided to persons other than the manufacturer or importer, its employees, or its agents; and

"(iii) that is designed, manufactured, marketed, and intended for use by recording professionals in the ordinary course of a lawful business.

"(B) In determining whether an audio recording device meets the requirements of subparagraph (A)(iii), factors to be considered shall include—

"(i) whether it has features used by recording professionals in the course of a lawful business, including features such as—

"(I) a data collection and reporting system of error codes during recording and playback;

"(II) a record and reproduce format providing 'read after write' and 'read after read';

"(III) a time code reader and generator conforming to the standards set by the Society of Motion Picture and Television Engineers for such readers and generators; and

"(IV) a professional input/output interface, both digital and analog, conforming to standards set by audio engineering organizations for connectors, signaling formats, levels, and impedances;

"(ii) the nature of the promotional materials used to market the audio recording device;

"(iii) the media used for the dissemination of the promotional materials, including the intended audience;

"(iv) the distribution channels and retail outlets through which the device is disseminated;

"(v) the manufacturer's or importer's price for the device as compared to the manufacturer's or importer's price for digital audio recording devices implementing the Serial Copy Management System;

"(vi) the relative quantity of the device manufactured or imported as compared to the size of the manufacturer's or importer's market for professional model products;

"(vii) the occupations of the purchasers of the device; and

"(viii) the uses to which the device is put.

"(11) The 'Register' is the Register of Copyrights.

"(12) The 'Serial Copy Management System' means the system for regulating serial copying by digital audio recording devices that is set forth in the technical reference document or in an order of the Secretary of Commerce under section 1022(b), or that conforms to the requirements of section 1021(a)(1)(C).

"(13) The 'technical reference document' is the document entitled 'Technical Reference Document for Audio Home Recording Act of 1991,' as such document appears in the report of the Committee on the Judiciary to the Senate reporting favorably the bill which upon enactment made the amendment adding this chapter.

"(14)(A) The 'transfer price' of a digital audio recording device or a digital audio recording medium is—

"(i) in the case of an imported product, the actual entered value at United States Customs (exclusive of any freight, insurance, and applicable duty), and

"(ii) in the case of a domestic product, the manufacturer's transfer price (FOB the manufacturer, and exclusive of any direct sales taxes or excise taxes incurred in connection with the sale).

"(B) Where the transferor and transferee are related entities or within a single entity, the transfer price shall not be less than a reasonable arms-length price under the principles of the regulations adopted pursuant to section 482 of the Internal Revenue Code of 1986, or any successor provision to such section 482.

"(15) A 'transmission' is any audio or audiovisual transmission, now known or later developed, whether by a broadcast station, cable system, multipoint distribution service, subscription service, direct broadcast satellite, or other form of analog or digital communication.

"(16) The 'Tribunal' is the Copyright Royalty Tribunal.

"(17) A 'writer' is the composer or lyricist of a particular musical work.

"(18) The terms 'analog format', 'copyright status', 'category code', 'generation status', and 'source material', mean those terms as they are used in the technical reference document.

**"§ 1002. Prohibition on certain infringement actions**

"(a) CERTAIN ACTIONS PROHIBITED.—

"(1) GENERALLY.—No action may be brought under this title, or under section 337 of the Tariff Act of 1930, alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device or a digital audio recording medium, or an analog audio recording device or analog audio recording medium, or the use of such a device or medium for making phonorecords. However, this subsection does not apply with respect to any claim against a person for infringement by virtue of the making of one or more copies or phonorecords for direct or indirect commercial advantage.

"(2) EXAMPLE.—For purposes of this section, the copying of a phonorecord by a consumer for private, noncommercial use is not for direct or indirect commercial advantage, and is therefore not actionable.

"(b) EFFECT OF THIS SECTION.—Nothing in this section shall be construed to create or expand a cause of action for copyright infringement except to the extent such a cause of action otherwise exists under other chapters of this title or under section 337 of the Tariff Act of 1930, or to limit any defenses that may be available to such causes of action.

**"§ 1003. Effect on other rights and remedies with respect to private home copying or otherwise**

"Except as expressly provided in this chapter with respect to audio recording devices and media, neither the enactment of this chapter nor anything contained in this chapter shall be construed to expand, limit, or otherwise affect the rights of any person with respect to private home copying of copyrighted works, or to expand, limit, create, or otherwise affect any other right or remedy that may be held by or available to any person under chapters 1 through 9 of this title.

SUBCHAPTER B—ROYALTY PAYMENTS

**"§ 1011. Obligation to make royalty payments**

"(a) PROHIBITION ON IMPORTATION AND MANUFACTURE.—No person shall import into and distribute in the United States, or manufacture and distribute in the United States, any digital audio recording device or digital audio recording medium unless such person—

"(1) records the notice specified by this section and subsequently deposits the statements of account and applicable royalty payments for such device or medium specified by this section and section 1012 of this title, or

"(2) complies with the applicable notice, statement of account, and payment obligations under a negotiated arrangement authorized pursuant to section 1016 of this title.

"(b) FILING OF NOTICE.—

"(1) GENERALLY.—The importer or manufacturer of any digital audio recording device or digital audio recording medium, within a product category or utilizing a technology with respect to which such manufacturer or importer has not previously filed a notice under this subsection, shall file a notice with the Register, no later than 45 days after the commencement of the first distribution in the United States of such device or medium, in such form as the Register shall prescribe by regulation.

"(2) CONTENTS.—Such notice shall—

"(A) set forth the manufacturer's or importer's identity and address,

"(B) identify such product category and technology, and

"(C) identify any trade or business names, trademarks, or like indicia of origin that the importer or manufacturer uses or intends to use in connection with the importation, manufacture, or distribution of such device or medium in the United States.

"(c) FILING OF QUARTERLY STATEMENTS OF ACCOUNT.—

"(1) GENERALLY.—Any importer or manufacturer that distributed during a given quarter any digital audio recording device or digital audio recording medium that it manufactured or imported shall file with the Register, in such form as the Register shall prescribe by regulation, a quarterly statement of account specifying, by product category, technology, and model, the number and transfer price of all digital audio recording devices and digital audio recording media that it distributed during such quarter.

"(2) TIMING, CERTIFICATION, AND ROYALTY PAYMENTS.—Such statement shall—

"(A) be filed no later than 45 days after the close of the period covered by the statement;

"(B) be certified as accurate by an authorized officer or principal of the importer or manufacturer;

"(C) be accompanied by the total royalty payment due for such period pursuant to section 1012 of this title.

"(3) PERIOD COVERED.—The quarterly statements of account may be filed on either a calendar or fiscal year basis, at the election of the manufacturer or importer.

"(d) FILING OF ANNUAL STATEMENTS OF ACCOUNT.—

"(1) GENERALLY.—Any importer or manufacturer that distributed during a given calendar or fiscal year (as applicable) any digital audio recording device or digital audio recording medium that it manufactured or imported shall also file with the Register a cumulative annual statement of account, in such form as the Register shall prescribe by regulation.

"(2) TIMING AND CERTIFICATION.—Such statement shall be filed no later than 60 days after the close of such calendar or fiscal year, and shall be certified as accurate by an authorized officer or principal of the importer or manufacturer.

"(3) INDEPENDENT REVIEW AND CERTIFICATION.—The annual statement of account shall be reviewed and, pursuant to generally accepted auditing standards, certified by an independent certified public accountant selected by the manufacturer or importer as fairly presenting the information contained therein, on a consistent basis and in accordance with the requirements of this chapter.

"(4) RECONCILIATION OF ROYALTY PAYMENT.—The cumulative annual statement of account shall be accompanied by any royalty payment due under section 1012 of this title that was not previously paid under subsection (c) of this section.

"(e) VERIFICATION.—

"(1) GENERALLY.—

"(A) The Register shall, after consulting with interested copyright parties and interested manufacturing parties, prescribe regulations specifying procedures for the verification of statements of account filed pursuant to this section.

"(B) Such regulations shall permit interested copyright parties to select independent certified public accountants to conduct audits in order to verify the accuracy of the information contained in the statements of account filed by manufacturers and importers.

"(C) Such regulations shall also—

"(i) specify the scope of such independent audits; and

"(ii) establish a procedure by which interested copyright parties will coordinate the engagement of such independent certified public accountants, in order to ensure that no manufacturer or importer is audited more than once per year.

"(D) All such independent audits shall be conducted at reasonable times, with reasonable advance notice, and shall be no broader in scope than is reasonably necessary to carry out the purposes of this subsection in accordance with generally accepted auditing standards.

"(2) INDEPENDENT CERTIFICATION.—The results of all such independent audits shall be certified as fairly presenting the information contained therein, on a consistent basis and in accordance with the requirements of this chapter and generally accepted auditing standards, by the certified public accountant responsible for the audit. The certification and results shall be filed with the Register.

"(3) ACCESS TO DOCUMENTS IN EVENT OF DISPUTE.—In the event of a dispute concerning the amount of the royalty payment due from a manufacturer or importer resulting from a verification audit conducted under this section—

"(A) any interested manufacturing party audited pursuant to this subsection, and its authorized representatives, shall be entitled to have access to all documents upon which the audit results under this subsection were based; and

"(B) any representative of an interested copyright party that has been approved by the Register under subsection (h)(2) of this section shall be entitled to have access to all documents upon which the audit results under subsection (d) of this section were based, subject to the limitations of subsection (h)(2) of this section.

"(f) COSTS OF VERIFICATION.—

"(1) The costs of all verification audits that are conducted pursuant to subsection (e) of this section shall be borne by interested copyright parties, except that, in the case of a verification audit of a manufacturer or importer that leads ultimately to recovery of an annual royalty underpayment of 5 percent or more of the annual payment made, the importer or manufacturer shall provide reimbursement for the reasonable costs of such audit.

"(2) Except as may otherwise be agreed by interested copyright parties, the costs of a verification audit conducted pursuant to subsection (e) of this section shall be borne by the party engaging the certified public accountant. Any recovery of royalty underpayments as a result of the audit shall be used first to provide reimbursement for the reasonable costs of such audit to the extent such costs have not otherwise been reimbursed by the manufacturer or importer pursuant to this subsection. Any remaining recovery shall be deposited with the Register pursuant to section 1013 of this title, or as may otherwise be provided by a negotiated arrangement authorized under section 1016 of this title, for distribution to interested copyright parties as though such funds were royalty payments made pursuant to this section.

"(g) INDEPENDENCE OF ACCOUNTANTS.—Each certified public accountant used by interested copyright parties or interested manufacturing parties pursuant to this section shall be in good standing and shall not be financially dependent upon interested copyright parties or interested manufacturing parties, respectively. The Register may, upon petition by any interested copyright party or interested manufacturing party, prevent the use of a particular certified public accountant on the ground that such accountant does not meet the requirements of this subsection.

"(h) CONFIDENTIALITY.—

"(1) GENERALLY.—The quarterly and annual statements of account filed pursuant to subsections (c) and (d) of this section, and information disclosed or generated during verification audits conducted pursuant to subsection (e) of this section, shall be presumed to contain confidential trade secret information within the meaning of section 1905 of title 18 of the United States Code. Except as provided in paragraphs (2), (3), and (4) of this subsection, neither the Register nor any member, officer, or employee of the Copyright Office or the Tribunal, may—

"(A) publicly disclose audit information furnished under this section or information contained in quarterly or annual statements of account, except that aggregate information that does not disclose, directly or indirectly, company-specific information may be made available to the public;

"(B) use such information for any purpose other than to carry out responsibilities under this chapter; or

"(C) permit anyone (other than members, officers, and employees of the Copyright Office and the Tribunal who require such information in the performance of duties under this chapter) to examine such information.

"(2) PROCEDURES FOR ACCESS TO BE PRESCRIBED BY REGISTER.—(A) The Register, after consulting with interested manufacturing parties and interested copyright parties, shall prescribe procedures for disclosing, in confidence, to representatives of interested copyright parties and representatives of interested manufacturing parties information contained in quarterly and annual statements of account and information generated as a result of verification audits.

"(B) Such procedures shall provide that only those representatives of interested copyright parties and interested manufacturing parties who have been approved by the Register shall have access to such information, and that all such representatives shall be required to sign a certification limiting the use of the information to—

"(i) verification functions under this section, and

"(ii) any enforcement actions that may result from such verification procedures.

"(3) ACCESS BY AUDITED MANUFACTURER.—Any interested manufacturing party that is audited pursuant to subsection (e) of this section, and its authorized representatives, shall be entitled to have access to all documents filed with the Register as a result of such audit.

"(4) ACCESS BY CONGRESS.—Nothing in this section shall authorize the withholding of information from the Congress.

**"§ 1012. Royalty payments**

"(a) DIGITAL AUDIO RECORDING DEVICES.—

"(1) The royalty payment due under section 1011 of this title for each digital audio recording device imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 2 percent of the transfer price. However, only the first person to manufacture and distribute or import and distribute such device shall be required to pay the royalty with respect to such device.

"(2) With respect to a digital audio recording device first distributed in combination with one or more devices, either as a physically integrated unit or as separate components, the royalty payment shall be calculated as follows:

"(A) If the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.

"(B) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have been distributed separately at any time during the preceding 4 quarters, the royalty payment shall be based on the average transfer price of such devices during those 4 quarters.

"(C) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have not been distributed separately at any time during the preceding 4 quarters, the royalty payment shall be based on a constructed price reflecting the proportional value of such device to the combination as a whole.

"(3) Notwithstanding paragraph (1) or (2) of this subsection, the amount of the royalty payment for each digital audio recording device or physically integrated unit containing a digital audio recording device shall not be less than $1 nor more than the royalty maximum. The royalty maximum shall be $8 per device, except that for a physically integrated unit containing more than one digital audio recording device, the royalty maximum for such unit shall be $12. During the 6th year after the effective date of this chapter, and no more than once each year thereafter, any interested copyright party may petition the Tribunal to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the Tribunal shall prospectively increase such royalty maximum with the goal of having no more than 10 percent of such payments at the new royalty maximum.

"(b) DIGITAL AUDIO RECORDING MEDIA.—The royalty payment due under section 1011 of this title for each digital audio recording medium imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 3 percent of the transfer price. However, only the first person to manufacture and distribute or import and distribute such medium shall be required to pay the royalty with respect to such medium.

"(c) RETURNED OR EXPORTED MERCHANDISE.—

"(1) In calculating the amount of royalty payments due under subsections (a) and (b)

of this section, manufacturers and importers may deduct the amount of any royalty payments already made on digital audio recording devices or media that are—

"(A) returned to the manufacturer or importer as unsold or defective merchandise; or

"(B) exported by the manufacturer or importer or a related person.

"(2) Any such credit shall be taken during the period when such devices or media are returned or exported, and the basis for any such credit shall be set forth in the statement of account for such period filed under section 1011(c) of this title.

"(3) Any such credit that is not fully used during such period may be carried forward to subsequent periods. If any returned or exported merchandise for which a credit has been taken is subsequently distributed, a royalty payment shall be made as specified under subsection (a) or (b) of this section, based on the transfer price applicable to such distribution.

**"§ 1013. Deposit of royalty payments and deduction of expenses**

"The Register shall receive all royalty payments deposited under this chapter and, after deducting the reasonable costs incurred by the Copyright Office under this chapter, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest under section 1014, 1015, or 1016 of this title. The Register shall submit to the Copyright Royalty Tribunal, on a quarterly basis, such information as the Tribunal shall require to perform its functions under this chapter.

**"§ 1014. Entitlement to royalty payments**

"(a) INTERESTED COPYRIGHT PARTIES.—The royalty payments deposited pursuant to section 1013 of this title shall, in accordance with the procedures specified in section 1015 or 1016 of this title, be distributed to any interested copyright party—

"(1) whose musical work or sound recording has been—

"(A) embodied in phonorecords lawfully made under this title that have been distributed to the public, and

"(B) distributed to the public in the form of phonorecords or disseminated to the public in transmissions, during the period to which such payments pertain; and

"(2) who has filed a claim under section 1015 or 1016 of this title.

"(b) ALLOCATION OF ROYALTY PAYMENTS TO GROUPS.—The royalty payments shall be divided into two funds as follows:

"(1) THE SOUND RECORDINGS FUND.—66⅔ percent of the royalty payments shall be allocated to the Sound Recordings Fund. The American Federation of Musicians (or any successor entity) shall receive 2⅔ percent of the royalty payments allocated to the Sound Recordings Fund for the benefit of nonfeatured musicians who have performed on sound recordings distributed in the United States. The American Federation of Television and Radio Artists (or any successor entity) shall receive 1⅓ percent of the royalty payments allocated to the Sound Recordings Fund for the benefit of nonfeatured vocalists who have performed on sound recordings distributed in the United States. The remaining royalty payments in the Sound Recordings Fund shall be distributed to claimants under subsection (a) of this section who are interested copyright parties under section 1001(a)(6)(i) of this title. Such claimants shall allocate such royalty payments, on a per sound recording basis, in the following manner: 40 percent to the recording artist or artists featured on such sound recordings (or the persons conveying rights in the artists' performances in the sound recordings), and 60 percent to the interested copyright parties.

"(2) THE MUSICAL WORKS FUND.—

"(A) 33⅓ percent of the royalty payments shall be allocated to the Musical Works Fund for distribution to interested copyright parties whose entitlement is based on legal or beneficial ownership or control of a copyright in a musical work.

"(B) Notwithstanding any contractual obligation to the contrary—

"(i) music publishers shall be entitled to 50 percent of the royalty payments allocated to the Musical Works Fund, and

"(ii) writers shall be entitled to the other 50 percent of the royalty payments allocated to the Musical Works Fund.

"(c) ALLOCATION OF ROYALTY PAYMENTS WITHIN GROUPS.—If all interested copyright parties within a group specified in subsection (b) of this section do not agree on a voluntary proposal for the distribution of the royalty payments within such group, the Tribunal shall, pursuant to the procedures specified in section 1015(c) of this title, allocate such royalty payments based on the extent to which, during the relevant period—

"(1) for the Sound Recordings Fund, each sound recording was distributed to the public in the form of phonorecords; and

"(2) for the Musical Works Fund, each musical work was distributed to the public in the form of phonorecords or disseminated to the public in transmissions.

**"§ 1015. Procedures for distributing royalty payments**

"(a) FILING OF CLAIMS AND NEGOTIATIONS.—

"(1) During the first 2 months of each calendar year after the calendar year in which this chapter takes effect, every interested copyright party that is entitled to royalty payments under section 1014 of this title shall file with the Tribunal a claim for payments collected during the preceding year in such form and manner as the Tribunal shall prescribe by regulation.

"(2) All interested copyright parties within each group specified in section 1014(b) of this title shall negotiate in good faith among themselves in an effort to agree to a voluntary proposal for the distribution of royalty payments. Notwithstanding any provision of the antitrust laws, for purposes of this section such interested copyright parties may agree among themselves to the proportionate division of royalty payments, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf; except that no agreement under this subsection may vary the division of royalties specified in section 1014(b) of this title.

"(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—Within 30 days after the period established for the filing of claims under subsection (a) of this section, in each year after the year in which this section takes effect, the Tribunal shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1014(c) of this title. If the Tribunal determines that no such controversy exists, it shall authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a) of this section, after deducting its reasonable administrative costs under this section.

"(c) RESOLUTION OF DISPUTES.—If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy.

**"§ 1016. Negotiated collection and distribution arrangements**

"(a) SCOPE OF PERMISSIBLE NEGOTIATED ARRANGEMENTS.—

"(1) Notwithstanding sections 1011 through 1015 of this title, interested copyright parties and interested manufacturing parties may at any time negotiate among or between themselves an alternative system for the collection, distribution, or verification of royalty payments provided for in this chapter.

"(2) Such a negotiated arrangement may vary the collection, distribution, and verification procedures and requirements that would otherwise apply, including the time periods for payment and distribution of royalties, but shall not alter the royalty rates specified in section 1012(a)(1) or (b) of this title, the division of royalty payments specified in section 1014(b) of this title, or the notice requirement of section 1011(b) of this title.

"(3) Such a negotiated arrangement may also provide that specified types of disputes that cannot be resolved among the parties shall be resolved by binding arbitration or other agreed upon means of dispute resolution. Notwithstanding any provision of the antitrust laws, for purposes of this section interested manufacturing parties and interested copyright parties may agree among themselves as to the collection, allocation, distribution, and verification of royalty payments, and may designate common agents to negotiate and carry out such activities on their behalf.

"(b) IMPLEMENTATION OF A NEGOTIATED ARRANGEMENT.—(1)(A) No negotiated arrangement shall go into effect under this section until the Tribunal has determined, after full opportunity for comment, that the participants in the negotiated arrangement include—

"(i) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Sound Recordings Fund,

"(ii) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Musical Works Fund as music publishers, and

"(iii) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Musical Works Fund as writers.

"(B) For purposes of subparagraph (A) of this paragraph, the determination as to two-thirds participation shall be based on annual retail sales of phonorecords in which musical works or sound recordings of musical works are embodied. One or more organizations representing any of the types of individual interested copyright parties specified in the first sentence of this subsection shall be presumed to represent two-thirds of that type of interested copyright party if the membership of, or other participation in, such organization or organizations includes two-thirds of that type of interested copyright party based on annual retail sales of phonorecords in

which musical works or sound recordings of musical works are embodied.

"(2) Notwithstanding the existence of a negotiated arrangement that has gone into effect under this subsection—

"(A) any interested manufacturing party that is not a party to such negotiated arrangement may fully satisfy its obligations under this subchapter by complying with the procedures set forth in section 1011 of this title; and

"(B) the Tribunal shall ensure that alternative distribution procedures are available for any interested copyright party that is not a party to such negotiated arrangement.

"(c) MAINTENANCE OF JURISDICTION BY TRIBUNAL.—Where a negotiated arrangement has gone into effect under this section, the Tribunal shall maintain jurisdiction to hear and address any objections to the arrangement that may arise while it is in effect, and to ensure the availability of alternative procedures for any interested manufacturing party or interested copyright party that is not a participant in the negotiated arrangement.

"SUBCHAPTER C—THE SERIAL COPY MANAGEMENT SYSTEM

**"§ 1021. Incorporation of the serial copy management system**

"(a) PROHIBITION ON IMPORTATION, MANUFACTURE, AND DISTRIBUTION.—

"(1) No person shall import, manufacture, or distribute any digital audio recording device or any digital audio interface device that does not conform to the standards and specifications to implement the Serial Copy Management System that are—

"(A) set forth in the technical reference document;

"(B) set forth in an order by the Secretary of Commerce under section 1022(b) (1), (2), or (3) of this title; or

"(C) in the case of a digital audio recording device other than a device defined in part II of the technical reference document or in an order issued by the Secretary pursuant to section 1022(b) of this title, established by the manufacturer (or, in the case of a proprietary technology, the proprietor of such technology) so as to achieve the same functional characteristics with respect to regulation of serial copying as, and to be compatible with the prevailing method for implementation of, the Serial Copy Management System set forth in the technical reference document or in any order of the Secretary issued under section 1022 of this title.

"(2) If the Secretary of Commerce approves standards and specifications under section 1022(b)(4) of this title, then no person shall import, manufacture, or distribute any digital audio recording device or any digital audio interface device that does not conform to such standards and specifications.

"(b) PROHIBITION ON CIRCUMVENTION OF THE SERIAL COPY MANAGEMENT SYSTEM.—No person shall import, manufacture, or distribute any device, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any program or circuit which implements, in whole or in part, the Serial Copy Management System in a digital audio recording device or a digital audio interface device.

"(c) ENCODING OF INFORMATION ON PHONORECORDS.—(1) No person shall encode a phonorecord of a sound recording with inaccurate information relating to the category code, copyright status, or generation status of the source material so as improperly to affect the operation of the Serial Copy Management System.

"(2) Nothing in this subchapter requires any person engaged in the importation, manufacture, or assembly of phonorecords to encode any such phonorecord with respect to its copyright status.

"(d) INFORMATION ACCOMPANYING TRANSMISSIONS IN DIGITAL FORMAT.—Any person who transmits or otherwise communicates to the public any sound recording in digital format is not required under this subchapter to transmit or otherwise communicate the information relating to the copyright status of the sound recording. However, any such person who does transmit or otherwise communicate such copyright status information shall transmit or communicate such information accurately.

**"§ 1022. Implementing the serial copy management system**

"(a) PUBLICATION OF TECHNICAL REFERENCE DOCUMENT.—Within 10 days after the date of the enactment of this chapter, the Secretary of Commerce shall cause the technical reference document to be published in the Federal Register.

"(b) ORDERS OF SECRETARY OF COMMERCE.—The Secretary of Commerce, upon petition by an interested manufacturing party or an interested copyright party, and after consultation with the Register, may, if the Secretary determines that to do so is in accordance with the purposes of this chapter, issue an order to implement the Serial Copy Management System set forth in the technical reference document as follows:

"(1) FUNCTIONALLY EQUIVALENT ALTERNATIVES.—The Secretary may issue an order for the purpose of permitting in commerce devices that do not conform to all of the standards and specifications set forth in the technical reference document, if the Secretary determines that such devices possess the same functional characteristics with respect to regulation of serial copying as, and are compatible with the prevailing method for implementation of, the Serial Copy Management System set forth in the technical reference document.

"(2) REVISED GENERAL STANDARDS.—The Secretary may issue an order for the purpose of permitting in commerce devices that do not conform to all of the standards and specifications set forth in the technical reference document, if the Secretary determines that—

"(A) the standards and specifications relating generally to digital audio recording devices and digital audio interface devices have been or are being revised or otherwise amended or modified such that the standards and specifications set forth in the technical reference document are not or would no longer be applicable or appropriate; and

"(B) such devices conform to such new standards and specifications and possess the same functional characteristics with respect to regulation of serial copying as the Serial Copy Management System set forth in the technical reference document.

"(3) STANDARDS FOR NEW DEVICES.—The Secretary may issue an order for the purpose of—

"(A) establishing whether the standards and specifications established by a manufacturer or proprietor for digital audio recording devices other than devices defined in part II of the technical reference document or a prior order of the Secretary under paragraph (1) or (2) of this subsection comply with the requirements of subparagraph (C) of section 1021(a)(1) of this title; or

"(B) establishing alternative standards or specifications in order to ensure compliance with such requirements.

"(4) MATERIAL INPUT TO DIGITAL DEVICE THROUGH ANALOG CONVERTER.—

"(A) GENERALLY.—Except as provided in subparagraphs (B) through (D), the Secretary, after publication of notice in the Federal Register and reasonable opportunity for public comment, may issue an order for the purpose of approving standards and specifications for a technical method implementing in a digital audio recording device the same functional characteristics as the Serial Copy Management System so as to regulate the serial copying of source material input through an analog converter in a manner equivalent to source material input in the digital format.

"(B) COST LIMITATION.—The order may not impose a total cost burden on manufacturers of digital audio recording devices, for implementing the Serial Copy Management System and the technical method prescribed in such order, in excess of 125 percent of the cost of implementing the Serial Copy Management System before the issuance of such order.

"(C) CONSIDERATION OF OTHER OBJECTIONS.—The Secretary shall consider other reasoned objections from any interested manufacturing party or interested copyright party.

"(D) LIMITATION TO DIGITAL AUDIO DEVICES.—The order shall not affect the recording of any source material on analog recording equipment and the order shall not impose any restrictions or requirements that must be implemented in any device other than a digital audio recording device or digital audio interface device.

"SUBCHAPTER D—REMEDIES

**"§ 1031. Civil remedies**

"(a) CIVIL ACTIONS.—Any interested copyright party or interested manufacturing party that is or would be injured by a violation of section 1011 or 1021 of this title, or the Attorney General of the United States, may bring a civil action in an appropriate United States district court against any person for such violation.

"(b) POWERS OF THE COURT.—In an action brought under subsection (a) of this section, the court—

"(1) except as provided in subsection (h) of this section, may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain such violation;

"(2) in the case of a violation of section 1011 (a) through (d) or 1021 of this title, shall award damages under subsection (d) of this section;

"(3) in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof;

"(4) in its discretion may award a reasonable attorney's fee to the prevailing party as part of the costs awarded under paragraph (3) if the court finds that the nonprevailing party has not proceeded in good faith; and

"(5) may grant such other equitable relief as it deems reasonable.

"(c) RECOVERY OF OVERDUE ROYALTY PAYMENTS.—In any case in which the court finds that a violation of section 1011 of this title involving nonpayment or underpayment of royalty payments has occurred, the violator shall be directed to pay, in addition to damages awarded under subsection (d) of this section, any such royalties due, plus interest calculated as provided under section 1961 of title 28, United States Code.

"(d) AWARD OF DAMAGES.—

"(1) SECTION 1011.—

"(A) DEVICE.—In the case of a violation of section 1011(a) through (d) of this title in-

volving a digital audio recording device, the court shall award statutory damages in an amount between a nominal level and $100 per device, as the court considers just.

"(B) MEDIUM.—In the case of a violation of section 1011(a) through (d) of this title involving a digital audio recording medium, the court shall award statutory damages in an amount between a nominal level and $4 per medium, as the court considers just.

"(2) SECTION 1021.—In any case in which the court finds that a violation of section 1021 of this title has occurred, the court shall award damages calculated, at the election of the complaining party at any time before final judgment is rendered, pursuant to subparagraph (A) or (B) of this paragraph, but in no event shall the judgment (excluding any award of actual damages to an interested manufacturing party) exceed a total of $1,000,000:

"(A) ACTUAL DAMAGES.—A complaining party may recover its actual damages suffered as a result of the violation and any profits of the violator that are attributable to the violation that are not taken into account in computing the actual damages. In determining the violator's profits, the complaining party is required to prove only the violator's gross revenue, and the violator is required to prove its deductible expenses and the elements of profit attributable to factors other than the violation.

"(B) STATUTORY DAMAGES.—

"(i) DEVICE.—A complaining party may recover an award of statutory damages for each violation of section 1021(a) or (b) of this title in the sum of not less than $1,000 nor more than $10,000 per device involved in such violation or per device on which a service prohibited by section 1021(b) of this title has been performed, as the court considers just.

"(ii) PHONORECORD.—A complaining party may recover an award of statutory damages for each violation of section 1021(c) of this title in the sum of not less than $10 nor more than $100 per phonorecord involved in such violation, as the court considers just.

"(iii) TRANSMISSION.—A complaining party may recover an award of damages for each transmission or communication that violates section 1021(d) of this title in the sum of not less than $10,000 nor more than $100,000, as the court considers just.

"(3) WILLFUL VIOLATIONS.—

"(A) In any case in which the court finds that a violation of section 1011(a) through (d) of this title was committed willfully and for purposes of direct or indirect commercial advantage, the court shall increase statutory damages—

"(i) for a violation involving a digital audio recording device, to a sum of not less than $100 nor more than $500 per device; and

"(ii) for a violation involving a digital audio recording medium, to a sum of not less than $4 nor more than $15 per medium, as the court considers just.

"(B) In any case in which the court finds that a violation of section 1021 of this title was committed willfully and for purposes of direct or indirect commercial advantage, the court in its discretion may increase the award of damages by an additional amount of not more than $5,000,000, as the court considers just.

"(4) INNOCENT VIOLATIONS OF SECTION 1021.—The court in its discretion may reduce the total award of damages against a person violating section 1021 of this title to a sum of not less than $250 in any case in which the court finds that—

"(A) the violator was not aware and had no reason to believe that its acts constituted a violation of section 1021 of this title, or

"(B) in the case of a violation of section 1021(a) of this title involving a digital audio recording device, the violator believed in good faith that the device complied with section 1021(a)(1)(C) of this title, except that this subparagraph shall not apply to any damages awarded under subsection (d)(2)(A) of this section.

"(e) MULTIPLE ACTIONS.—

"(1) GENERALLY.—No more than one action shall be brought against any party and no more than one award of statutory damages under subsection (d) of this section shall be permitted—

"(A) for any violations of section 1011 of this title involving the same digital audio recording device or digital audio recording medium; or

"(B) for any violations of section 1021 of this title involving digital audio recording devices or digital audio recording media of the same model, except that this subparagraph shall not bar an action or an award of damages with respect to digital audio recording devices or digital audio recording media that are imported, manufactured, or distributed subsequent to a final judgment in a prior action.

"(2) NOTICE AND INTERVENTION.—Any complaining party who brings an action under this section shall serve a copy of the complaint upon the Register within 10 days after the complaining party's service of a summons upon a defendant. The Register shall cause a notice of such action to be published in the Federal Register within 10 days after receipt of such complaint. The court shall permit any other interested copyright party or interested manufacturing party entitled to bring the action under section 1031(a) of this title who moves to intervene within 30 days after the publication of such notice to intervene in the action.

"(3) AWARD.—

"(A) GENERALLY.—Except as provided in subparagraph (B), the court may award recovery of actual damages for a violation of section 1021 of this title pursuant to subsection (d)(2)(A) of this section to each complaining party in an action who elects to recover actual damages.

"(B) LIMITATIONS.—

"(i) If more than one complaining party elects to recover actual damages pursuant to subsection (d)(2)(A) of this section, only a single award of the violator's profits shall be made, which shall be allocated as the court considers just.

"(ii) If any complaining interested copyright party or parties elect to recover statutory damages pursuant to subsection (d)(2) of this section in an action in which one or more other complaining interested copyright parties have elected to recover actual damages, the single award of statutory damages permitted pursuant to paragraph (1) of this subsection shall be reduced by the total amount of actual damages awarded to interested copyright parties pursuant to subsection (d)(2)(A) of this section.

"(f) PAYMENT OF OVERDUE ROYALTIES AND DAMAGES.—The court may allocate any award of damages under subsection (d) of this section between or among complaining parties as it considers just. Any award of damages that is allocated to an interested copyright party and any award of overdue royalties and interest under subsection (c) of this section shall be deposited with the Register pursuant to section 1013 of this title, or as may otherwise be provided pursuant to a negotiated arrangement authorized under section 1016 of this title, for distribution to interested copyright parties as though such funds were royalty payments made pursuant to section 1011 of this title.

"(g) IMPOUNDING OF ARTICLES.—At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of any digital audio recording device, digital audio interface device, phonorecord, or device specified in section 1021(b) of this title that is in the custody or control of the alleged violator and that the court has reasonable cause to believe does not comply with, or was involved in a violation of, section 1021 of this title.

"(h) LIMITATIONS REGARDING PROFESSIONAL MODELS AND OTHER EXEMPT DEVICES.—Unless a court finds that the determination by a manufacturer or importer that a device fits within the exemption of subparagraph (A) or (B) of section 1001(3) of this title was without a reasonable basis or not in good faith, the court shall not grant a temporary or preliminary injunction against the distribution of such device by the manufacturer or importer.

"(i) REMEDIAL MODIFICATION AND DESTRUCTION OF ARTICLES.—As part of a final judgment or decree finding a violation of section 1021 of this title, the court shall order the remedial modification, if possible, or the destruction of any digital audio recording device, digital audio interface device, phonorecord, or device specified in section 1021(b) of this title that—

"(1) does not comply with, or was involved in a violation of, section 1021 of this title, and

"(2) is in the custody or control of the violator or has been impounded under subsection (g) of this section.

"(j) DEFINITIONS.—For purposes of this section—

"(1) the term 'complaining party' means an interested copyright party, interested manufacturing party, or the Attorney General of the United States when one of these parties has initiated or intervened as a plaintiff in an action brought under this section; and

"(2) the term 'device' does not include a phonorecord.

**"§ 1032. Binding arbitration**

"(a) DISPUTES TO BE ARBITRATED.—Any dispute between an interested manufacturing party and an interested copyright party shall be resolved through binding arbitration, in accordance with the provisions of this section, if—

"(1) the parties mutually agree; or

"(2) before the date of first distribution in the United States of the product which is the subject of the dispute, an interested manufacturing party or an interested copyright party requests arbitration concerning whether such product is or is not a digital audio recording device, a digital audio recording medium, or a digital audio interface device, or concerning the basis on which royalty payments are to be made with respect to such product.

"(b) ARBITRAL PROCEDURES.—

"(1) REGULATIONS FOR COORDINATION OF ARBITRATION.—The Register shall, after consulting with interested copyright parties, prescribe regulations establishing a procedure by which interested copyright parties will coordinate decisions and representation concerning the arbitration of disputes. No interested copyright party shall have the authority to request, agree to, or (except as an intervenor pursuant to subsection (c) of this section) enter into, binding arbitration unless that party shall have been authorized to do so pursuant to the regulations prescribed by the Register.

"(2) PANEL.—Except as otherwise agreed by the parties to a dispute that is to be submitted to binding arbitration under subsection (a) of this section, the dispute shall be heard by a panel of three arbitrators, with one arbitrator selected by each of the two sides to the dispute and the third arbitrator selected by mutual agreement of the first two arbitrators chosen.

"(3) DECISION.—The arbitral panel shall render its final decision concerning the dispute, in a written opinion explaining its reasoning, within 120 days after the date on which the selection of arbitrators has been concluded. The Register shall cause to be published in the Federal Register the written opinion of the arbitral panel within 10 days after receipt thereof.

"(4) TITLE 9 PROVISIONS TO GOVERN.—Except to the extent inconsistent with this section, any arbitration proceeding under this section shall be conducted in the same manner, subject to the same limitations, carried out with the same powers (including the power to summon witnesses), and enforced in the courts of the United States as an arbitration proceeding under title 9, United States Code.

"(5) PRECEDENTS.—In rendering a final decision, the arbitral panel shall take into account any final decisions rendered in prior proceedings under this section that address identical or similar issues; and failure of the arbitral panel to take account of such prior decisions may be considered imperfect execution of arbitral powers under section 10(a)(4) of title 9, United States Code.

"(c) NOTICE AND RIGHT TO INTERVENE.—Any interested copyright party or interested manufacturing party that requests an arbitral proceeding under this section shall provide the Register with notice concerning the parties to the dispute and the nature of the dispute within 10 days after formally requesting arbitration under subsection (a) of this section. The Register shall cause a summary of such notice to be published in the Federal Register within 10 days after receipt of such notice. The arbitral panel shall permit any other interested copyright party or interested manufacturing party who moves to intervene within 20 days after such publication to intervene in the action.

"(d) AUTHORITY OF ARBITRAL PANEL TO ORDER RELIEF.—

"(1) TO PROTECT PROPRIETARY INFORMATION.—The arbitral panel shall issue such orders as are appropriate to protect the proprietary technology and information of parties to the proceeding, including provision for injunctive relief in the event of a violation of such order.

"(2) TO TERMINATE PROCEEDING.—The arbitral panel shall terminate any proceeding that it has good cause to believe has been commenced in bad faith by a competitor in order to gain access to proprietary information. The panel shall also terminate any proceeding that it believes has been commenced before the technology or product at issue has been sufficiently developed or defined to permit an informed decision concerning the applicability of this chapter to such technology or product.

"(3) TO ORDER RELIEF.—In any case in which the arbitral panel finds, with respect to devices or media that were the subject of the dispute, that royalty payments have been or will be due under section 1011 of this title through the date of the arbitral decision, the panel shall order the deposit of such royalty payments pursuant to section 1013 of this title, plus interest calculated as provided under section 1961 of title 28, United States Code. The arbitral panel shall not award monetary or injunctive relief, as provided in section 1031 of this title or otherwise, except as is expressly provided in this subsection.

"(e) EFFECT OF ARBITRATION PROCEEDING ON CIVIL ACTIONS AND REMEDIES.—Notwithstanding any provision of section 1031 of this title, no civil action may be brought or relief granted under section 1031 of this title against any party to an ongoing or completed arbitration proceeding under this section, with respect to devices or media that are the subject of such an arbitration proceeding. However, this subsection does not bar—

"(1) an action for injunctive relief at any time based on a violation of section 1021 of this title; or

"(2) an action or any relief with respect to those devices or media distributed by their importer or manufacturer following the conclusion of such arbitration proceeding, or, if so stipulated by the parties, prior to the commencement of such proceeding.

"(f) ARBITRAL COSTS.—Except as otherwise agreed by the parties to a dispute, the costs of an arbitral proceeding under this section shall be divided among the parties in such fashion as is considered just by the arbitral panel at the conclusion of the proceeding. Each party to the dispute shall bear its own attorney fees unless the arbitral panel determines that a nonprevailing party has not proceeded in good faith and that, as a matter of discretion, it is appropriate to award reasonable attorney's fees to the prevailing party.".

**SEC. 3. TECHNICAL AMENDMENTS.**

(a) Functions of Register.—Chapter 8 of title 17, United States Code is amended—

(1) in section 801(b)—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding the following new paragraph at the end:

"(4) to distribute royalty payments deposited with the Register of Copyrights under section 1014, to determine, in cases where controversy exists, the distribution of such payments, and to carry out its other responsibilities under chapter 10"; and

(2) in section 804(d)—

(A) by inserting "or (4)" after "801(b)(3)"; and

(B) by striking "or 119" and inserting "119, 1015, or 1016".

(b) DEFINITIONS.—Section 101 of title 17, United States Code, is amended by striking "As used" and inserting "Except as otherwise provided in this title, as used".

(c) MASK WORKS.—Section 912 of title 17, United States Code, is amended—

(1) in subsection (a) by inserting "or 10" after "8"; and

(2) in subsection (b) by inserting "or 10" after "8".

**SEC. 4. EFFECTIVE DATE.**

This Act, and the amendments made by this Act, shall take effect on the date of the enactment of this Act or January 1, 1992, whichever date is later.

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KEY ELEMENTS OF DIGITAL HOME TAPING LEGISLATION

(1) The legislation provides for an exemption from copyright infringement liability for a consumer for digital and analog audio taping for private, noncommercial use.

(2) The legislative provisions discussed below apply to all digital audio recording technologies (DAT, DCC, Mini Disc, CD-R, etc.).

(3) All digital audio recorders imported for sale or manufactured in the U.S., except professional models, must contain the Serial Copy Management System (SCMS) to prevent the making of digital copies of copies.

(4) Importers and domestic manufacturers will make royalty payments as follows:

For digital audio recorders, 2% of the manufacturer's wholesale price or customs value with an $8 cap per unit and a $1 minimum payment per machine; for machines that have two recorders the cap is $12; Both the $12 and $8 cap is adjustable upwards after five years—the floor is fixed.

Digital audio blank media, 3% of the manufacturer's wholesale price or customs value.

(5) The royalties would be collected by the Copyright Office and distributed by the Copyright Royalty Tribunal as follows: one-third to the owners of the copyright in the musical work and two-thirds to the owners of the copyright in the sound recording.

Those funds would be further allocated.

Musical works funds: 50%—songwriter; 50%—music publishers.

Sound Recording fund: 38%—featured artist; 2⅔%—American Federation of Television and Radio Artists; 58%—record companies.●

● Mr. HATCH. Mr. President, I am pleased to join with my colleagues today to introduce the Audio Home Recording Act of 1991. This legislation represents an agreement among all segments of the music industry of a highly contentious issue that has divided them for years. For many of us in Congress, it also identifies a solution that we have urged for many years to resolve this issue. I am particularly pleased that the parties themselves have been able to agree to a solution without the Federal Government having to impose a remedy. It is preferable that business and industry negotiate solutions to their problems rather than look to Congress to solve them. Government is better able then to fulfill its important function of protecting the public interest while encouraging marketplace solutions to business problems.

We must preserve the U.S. status as the world's leader in ideas and innovations. We lead the world in technological innovations and creativity, and we are foremost in the area of creating entertainment—books, art, movies, and music. Our intellectual property laws have fostered an environment in which people are encouraged to engage in, and are rewarded for, their creative efforts.

I have devoted a great deal of my time in the last few years to ensuring that our system of intellectual property protection is adequate to both protect creative works and to provide adequate incentives for our creators to continue their efforts. As ranking member of the Senate Subcommittee on Patents, Copyrights and Trademarks, I have introduced or been actively involved in legislation to protect process patents, to conform our copyright laws to international copyright treaties in order to allow the United States to join the Berne Convention, to enact a major reform of our trademark

laws, to protect against unauthorized use of computer software, and to raise the level of intellectual property protection overseas.

One issue, however, that we have been unable to resolve is the issue of how the copyright law should deal with private noncommercial taping of sound recordings. I have favored creating a system of royalties that would compensate copyright owners and artists for royalties they lose because of lost sales. Others have argued that such a system should only be created if there is proof that home taping does indeed result in lost sales for sound recordings. Until the agreement that is the basis for this legislation was reached, the issue had proven to be unresolvable.

The primary beneficiary of the agreement that this legislation embodies is the American music consumer. The dispute between the hardware manufacturers and the music industry has prevented listeners from accessing the latest technologies. Unlike most of the rest of the world, most U.S. music fans have been unable to buy digital audiotape equipment and prerecorded digital audiotape. Newer technologies such as mini-compact disks, digital audiocassettes and recordable compact disks are on the horizon, but their availability has been threatened and the availability of compatible software to play on them has been stalled by this dispute. The legislation we are introducing today clears the way for these exciting new technologies to become widely available to American consumers.

The legislation benefits all segments of the music software and hardware industry. Electronics manufacturers will be able to introduce new recording technologies without worrying about the possibility of copyright infringements suits and with the knowledge that copyrighted material will be made available in the new digital formats. Copyright owners, songwriters, musicians, and performers will be compensated through a royalty system for the use of the copyrighted material. In addition, the bill also requires the use of a serial code management system [SCMS] to prevent serial copying of copyrighted material. The SCMS allows unlimited copying of original source material, but prevents the copying of copies.

The legislation we introduce today is comprehensive and flexible insofar as it will apply to all digital recording technologies. I am pleased that the parties were able to agree to a prospective solution that will encompass all digital recording technologies.

Mr. President, I believe that this legislation is a fair solution to a complicated problem. It has benefits for all involved, including, first and foremost, the consumer. I look forward to expeditious hearings in the Subcommittee on Patents, Copyrights and Trademarks and to working with my colleagues to perfect the legislation and enact it into law.●

● Mr. KENNEDY. Mr. President, I am pleased to join as an original sponsor of the Digital Audio Recording Act of 1991 and I commend Senator DECONCINI for his leadership in developing this worthwhile compromise. The legislation has broad support from the creative artist and manufacturing sides of the recording industry, and will ensure American consumers continued access to digital audio recording technologies, while leaving analog recording unaffected.

This legislation improves upon the flawed digital audio tape bill introduced in the 101st Congress and referred to the Commerce Committee. The negotiations leading to the current bill reflect the work of creative artists and composers as full partners throughout its development. It is clear that creative rights should not be sacrificed for industry profits from high technology, and I am satisfied that this legislation takes account of the protections due the Nation's artists.

In recent years, songwriters, music publishers and other copyright holders have been legitimately concerned that the availability of digital audio recorder technology in the United States would lead to an intolerable situation where they would receive little or no royalties for their work. The objections of creative artists focused on the fact that the recorders, which play original digital recordings with virtually flawless sound quality, can also be used to produce digital copies of equal quality.

Without this legislation, any record pirate could make multiple flawless copies of originals or even copies of copies, leaving the creative artists without compensation. These artists have already lost hundreds of millions of dollars through illegal copying of music in the analog format, and they recognize that the availability of digital copies with superior sound quality would leave buyers with little incentive to purchase original recordings.

This legislation is designed to remedy these injustices. It addresses the concerns of artists about the negative impact of sales of blank digital tapes and digital recorders. It requires that a serial copy management system be included in all nonprofessional digital audio recorders sold in the United States. That system permits unlimited digital copies of original recordings, but prevents the recorder from making any copies of copies. As a result, the likelihood of illegal digital taping will be dramatically reduced.

In addition, unlike the proposal in the last Congress, a royalty system will be implemented to protect the interests of creative artists, by assessing fees on foreign and U.S. manufacturers of records and tapes. The fee will go into a royalty fund administered by the U.S. Copyright Office and the Copyright Royalty Tribunal. The fee will be assessed on importers and manufacturers, rather than retailers and consumers.

The provisions of this bill will apply prospectively to all future digital audio recording devices, so that creative artists and manufacturers will be protected as technologies are brought on line.

The supporters of this agreement represent all facets of the industry, including the Recording Industry Association of America, the Electronic Industries Association, and the National Music Publishers Association, which represents the copyright coalition of songwriters and publishers, and includes ASCAP.

Consumers will derive the greatest benefits from this compromise, because they will now receive unlimited access to digital audio technology, with the assurance of a stable market of recorders, and the ability to purchase and record music of the best sound clarity.

This bill reaffirms the fundamental principle of our copyright laws that artists deserve royalties for their work. I commend Senator DECONCINI for his outstanding efforts to achieve this fair result, and I look forward to the enactment of this important legislation.●

## ADDITIONAL COSPONSORS

S. 98

At the request of Mr. PRESSLER, the names of the Senator from Idaho [Mr. CRAIG], and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of S. 98, a bill to amend the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989.

S. 140

At the request of Mr. WIRTH, the names of the Senator from Arkansas [Mr. PRYOR], and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of S. 140, a bill to increase Federal payments in lieu of taxes to units of general local government, and for other purposes.

S. 141

At the request of Mr. DASCHLE, the names of the Senator from Massachusetts [Mr. KERRY], and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of S. 141, a bill to amend the Internal Revenue Code of 1986 to extend the solar and geothermal energy tax credits through 1996.

S. 196

At the request of Mr. COATS, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 196, a bill to grant the power to the President to reduce budget authority.

S. 250

At the request of Mr. FORD, the name of the Senator from Louisiana [Mr.

JOHNSTON] was added as a cosponsor of S. 250, a bill to establish national voter registration procedures for Federal elections, and for other purposes.

S. 327

At the request of Mr. BOREN, the names of the Senator from Oregon [Mr. HATFIELD], and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of S. 327, a bill to amend title 38, United States Code, to require the Secretary of Veterans Affairs to furnish outpatient medical services for any disability of a former prisoner of war.

S. 588

At the request of Mr. MITCHELL, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 588, a bill to amend the Internal Revenue Code of 1986 with respect to the tax treatment of certain cooperative service organizations of private and community foundations.

S. 649

At the request of Mr. BREAUX, the names of the Senator from Virginia [Mr. WARNER], and the Senator from Maine [Mr. MITCHELL] were added as cosponsors of S. 649, a bill to amend the Internal Revenue Code of 1986 to repeal the luxury tax on boats.

S. 811

At the request of Mr. HOLLINGS, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 811, a bill to require the Secretary of Transportation to lead and coordinate Federal efforts in the development of magnetic levitation transportation technology and foster implementation of magnetic levitation and other high-speed rail transportation systems, and for other purposes.

S. 843

At the request of Mr. BREAUX, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 843, a bill to amend title 46, United States Code, to repeal the requirement that the Secretary of Transportation collect a fee or charge for recreational vessels.

S. 866

At the request of Mr. BREAUX, the names of the Senator from Illinois [Mr. DIXON], and the Senator from Wyoming [Mr. WALLOP] were added as cosponsors of S. 866, a bill to amend the Internal Revenue Code of 1986 to clarify that certain activities of a charitable organization in operating an amateur athletic event do not constitute unrelated trade or business activities.

S. 878

At the request of Mr. DODD, the names of the Senator from Rhode Island [Mr. CHAFEE], the Senator from Virginia [Mr. WARNER], and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of S. 878, a bill to assist in implementing the Plan of Action adopted by the World Summit for Children, and for other purposes.

S. 918

At the request of Mr. PACKWOOD, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 918, a bill to amend the Internal Revenue Code of 1986 to exempt small manufacturers, producers, and importers from the firearms excise tax.

S. 972

At the request of Mr. BRADLEY, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 972, a bill to amend the Social Security Act to add a new title under such Act to provide assistance to States in providing services to support informal caregivers of individuals with functional limitations.

S. 1179

At the request of Mr. JOHNSTON, the names of the Senator from Oklahoma [Mr. BOREN], and the Senator from Arkansas [Mr. PRYOR] were added as cosponsors of S. 1179, a bill to stimulate the production of geologic-map information in the United States through the cooperation of Federal, State, and academic participants.

S. 1219

At the request of Mr. BAUCUS, the names of the Senator from Georgia [Mr. FOWLER], the Senator from Arkansas [Mr. BUMPERS], the Senator from Nevada [Mr. REID], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of S. 1219, a bill to enhance the conservation of exotic wild birds.

S. 1261

At the request of Mr. DOLE, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1261, a bill to amend the Internal Revenue Code of 1986 to repeal the luxury excise tax.

S. 1270

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1270, a bill to require the heads of departments and agencies of the Federal Government to disclose information concerning United States personnel classified as prisoners of war or missing in action.

S. 1354

At the request of Mr. HARKIN, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 1354, a bill to amend title II of the Social Security Act to increase the amount of remuneration an election official or worker may receive and be excluded from an agreement between a State and the Secretary providing for the extension of benefits under such title to State employees.

S. 1424

At the request of Mr. CONRAD, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 1424, a bill to amend chapter 17 of title 38, United States Code, to require the Secretary of Veterans Affairs to conduct a mobile health care clinic program for furnishing health care to veterans located in rural areas of the United States.

S. 1466

At the request of Mr. ROTH, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1466, a bill to amend the Congressional Budget Act of 1974 to ensure the neutrality of the Congressional Budget Office.

S. 1479

At the request of Mr. WOFFORD, his name was added as a cosponsor of S. 1479, a bill to amend the Public Health Service Act to reauthorize certain programs with respect to health care areas, to provide for the establishment of model programs in behavioral health, and for other purposes.

At the request of Mr. INOUYE, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 1479, supra.

S. 1521

At the request of Mr. MCCONNELL, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 1521, a bill to provide a cause of action for victims of sexual abuse, rape, and murder, against producers and distributors of hard-core pornographic material.

S. 1565

At the request of Mr. GRAHAM, the name of the Senator from Washington [Mr. ADAMS] was added as a cosponsor of S. 1565, a bill to amend the Federal Aviation Act of 1958 to ensure fair treatment of airline employees in connection with routine transfers.

SENATE JOINT RESOLUTION 100

At the request of Mr. KOHL, the names of the Senator from Delaware [Mr. ROTH], the Senator from Connecticut [Mr. DODD], the Senator from Missouri [Mr. BOND], and the Senator from California [Mr. SEYMOUR] were added as cosponsors of Senate Joint Resolution 100, a joint resolution designating January 5, 1992 through January 11, 1992 as "National Law Enforcement Training Week."

SENATE JOINT RESOLUTION 124

At the request of Mr. WOFFORD, his name was added as a cosponsor of Senate Joint Resolution 124, a joint resolution to designate "National Visiting Nurse Associations Week" for 1992.

SENATE JOINT RESOLUTION 131

At the request of Mr. LUGAR, the names of the Senator from Florida [Mr. MACK], and the Senator from Delaware [Mr. BIDEN] were added as cosponsors of Senate Joint Resolution 131, a joint resolution designating October 1991 as "National Down Syndrome Awareness Month."

SENATE JOINT RESOLUTION 176

At the request of Mr. DIXON, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of Senate Joint Resolution 176, a joint resolution to designate March 19, 1992,

as "National Women in Agriculture Day."

SENATE JOINT RESOLUTION 183

At the request of Mr. BIDEN, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Joint Resolution 183, a joint resolution to designate the week beginning September 1, 1991, as "National Campus Crime and Security Awareness Week."

SENATE RESOLUTION 82

At the request of Mr. SMITH, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of Senate Resolution 82, a resolution to establish a Select Committee on POW/MIA Affairs.

## SENATE RESOLUTION 165—TO AMEND THE STANDING RULES OF THE SENATE

Mr. DOLE submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 165

*Resolved*, Rule XXXVII of the Standing Rules of the Senate is hereby amended to add a new paragraph as follows:

"Notwithstanding section 501(c) of Title V of the Ethics in Government Act of 1978 as amended, honoraria may be paid on behalf of a Member, officer or employee of the United States Senate to a charitable organization, without any restriction on the amount of such honoraria.

No honoraria paid on behalf of a Member, officer or employee of the United States Senate shall be made to a charitable organization from which such individual or a parent, sibling, spouse, child or dependent relative of such individual derives any financial benefit."

The amendment made by this resolution to Rule XXXVII of the Standing Rules of the Senate shall be effective immediately upon enactment of the Fiscal Year 1992 Legislative Branch Appropriations Bill.

## SENATE RESOLUTION 166—RELATIVE TO THE FEDERAL EXCISE TAX ON GASOLINE AND DIESEL FUEL

Mr. COATS (for himself and Mr. SIMPSON) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 166

Whereas many sectors of the Nation's economy have yet to recover from the recent economic downturn;

Whereas a tax increase would reduce personal consumption, considered to be the engine of the American Economy, and an increase in gasoline and diesel fuel taxes would seriously hinder economic recovery;

Whereas an increase in the Federal excise tax on motor fuels by five cents per gallon would further damage the economy in that such an increase would—

(1) increase the Consumer Price Index by 0.2 percent,

(2) imperil the current trend towards economic recover,

(3) reduce America's potential for growth in the Gross National Product in the near term by $11 billion, and

(4) reduce urgently needed job creation by 234,000 job opportunities in the first year;

Whereas Federal, State, and local taxes account for nearly 30 percent of the retail price of gasoline;

Whereas all States already tax gasoline, and twenty States in the last two years have increased, or considered increasing, their taxes on gasoline; and

Whereas gasoline and diesel fuel excise taxes are the most regressive forms of taxation, in that less affluent Americans must spend a greater proportion of their income to pay those taxes than do more affluent Americans: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that, in light of the current economic conditions, the Federal excise taxes on gasoline and diesel fuel should not be increased.

Mr. COATS. Mr. President, I send to the desk a sense-of-the-Senate resolution which would express the Senate's strong disagreement with the proposal in the House of Respresentatives to add an additional 5-cents-per-gallon gasoline tax.

This body just passed a significant new 5-year funding bill for rebuilding and repairing our roads and building new projects without adding a tax. It seems unconscionable to me to now go to the American people to say that was not enough, that we need an additional tax on the very people who can least afford it in order to add a number of demonstration and so-called pork barrel projects in certain Members' districts.

My State is impacted severely by that. For every $2 they pay in they are only going to get $1 back on the new tax. I do not think we need it. I think it is a regressive tax that impacts on elderly people in rural areas and middle-income families, and we should strongly express displeasure.

I hope the House of Representatives will not only listen to us but also the people of America. It is going to add to GNP and have a negative impact on the economy and signficantly increase unemployment. It is the wrong thing to do at the wrong time.

So I strongly urge my colleagues to resist the temptation to fund pork barrel projects, most of which will not benefit their own States, in order to add a nickel-a-gallon gasoline tax.

## AMENDMENTS SUBMITTED

## NATIONAL DEFENSE AUTHORIZATION ACT, FISCAL YEARS 1992 AND 1993

### LEVIN (AND OTHERS) AMENDMENT NO. 979

Mr. LEVIN (for himself, Mr. BIDEN, and Mr. CHAFEE) proposed an amendment to the bill (S. 1507) to authorize appropriations for fiscal years 1992 and 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes, as follows:

On page 44, between lines 3 and 4, insert the following new subsection:

(i) INTERPRETATION.—Nothing in this Act may be construed to imply congressional authorization for development, testing, or deployment of anti-ballistic-missile systems in violation of the ABM Treaty, including any protocols or amendments thereto.

### HARKIN (AND OTHERS) AMENDMENT NO. 980

Mr. HARKIN (for himself, Mr. SIMON, and Mr. BUMPERS) proposed an amendment to the bill S. 1507, supra, as follows:

On page 31, line 25, strike out "$10,653,478,000" and insert in lieu thereof "$9,253,478,000".

On page 40, line 13, strike out "$4,600,000,000" and insert in lieu thereof "$3,200,000,000".

On page 40, line 17, strike out "$1,550,530,000" and insert in lieu thereof "$700,000,000".

On page 41, line 1, strike out "not more than $625,383,000" and insert in lieu thereof "no funds".

On page 41, line 5, strike out "$744,609,000" and insert in lieu thereof "$820,522,000".

### HARKIN (AND OTHERS) AMENDMENT NO. 981

Mr. HARKIN (for himself, Mr. JEFFORDS, and Mr. SIMON) proposed an amendment to the bill S. 1507, supra, as follows:

On page 33, lines 16 and 17, strike out "for deployment by fiscal year 1996".

On page 38, lines 5 and 6, strike out "capable of deployment by fiscal year 1996".

On page 43, lines 13, 14 and 15, strike out "As deployment at the anti-ballistic-missile site described in subsection (b)(2)(B) draws near to the deployment date of fiscal year 1996".

## EMERGENCY UNEMPLOYMENT COMPENSATION

### DOLE AMENDMENT NOS. 982 THROUGH 990

(Ordered to lie on the table.)

Mr. DOLE submitted nine amendments intended to be proposed by him to the bill (S. 1554) to provide emergency unemployment compensation, and for other purposes, as follows:

AMENDMENT NO. 982

At the end of the bill, insert the following new section:

**SEC. . REPEAL OF LUXURY EXCISE TAX.**

(a) IN GENERAL.—Chapter 31 of the Internal Revenue Code of 1986 (relating to retail excise taxes) is amended by striking subchapter A and by redesignating subchapters B and C as subchapters A and B, respectively.

(b) CONFORMING AMENDMENTS.—

(1) The material preceding paragraph (1) of section 4221(a) of the Internal Revenue Code of 1986 is amended by striking "subchapter A or C of chapter 31" and inserting "section 4051".

(2) Subsection (a) of section 4221 of such Code is amended by striking the last sentence.

(3) Subsection (c) of section 4221 of such Code is amended by striking "section 4001(c), 4002(b), 4003(c), 4004(a), or 4053(a)(6)" and inserting "section 4053(a)(6)".

(4) Paragraph (1) of section 4221(d) of such Code is amended by striking "taxes imposed by subchapter A or C of chapter 31" and inserting "the tax imposed by section 4051".

(5) Subsection (d) of section 4222 of such Code is amended by striking "sections 4001(c), 4002(b), 4003(c), 4004(a), or 4053(a)(6)" and inserting "section 4053(a)(6)".

(6) Section 4293 of such Code is amended by striking "subchapter A of chapter 31,".

(7) The table of subchapters for chapter 31 of such Code is amended to read as follows:

"SUBCHAPTER A. Special fuels.
"SUBCHAPTER B. Heavy trucks and trailers.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on June 11, 1991.

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AMENDMENT NO. 983

On page 40, line 15, strike "the date of the enactment of this Act" and insert "September 9, 1991".

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AMENDMENT NO. 984

On page 40, beginning with line 3, strike all through line 21.

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AMENDMENT NO. 985

On page 36, beginning with line 17, strike all through page 40, line 21.

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AMENDMENT NO. 986

On page 36, beginning with line 17, strike all through page 40, line 2.

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AMENDMENT NO. 987

On page 24, beginning with line 9, strike all through line 16.

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AMENDMENT NO. 988

On page 24, beginning with line 9, strike all through page 36, line 4, and insert the following:

**SEC. 3. EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT.**

(a) IN GENERAL.—Any agreement under this Act shall provide that the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment compensation account with respect to such individual's benefit year.

(b) AMOUNT IN ACCOUNT.—

(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

(A) 100 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which the individual most recently received regular compensation, or

(B) the applicable limit times the individual's average weekly benefit amount for the benefit year.

(2) APPLICABLE LIMIT.—For purposes of this section—

(A) IN GENERAL.—Except as provided in this paragraph, the applicable limit shall be determined under the following table:

| In the case of weeks beginning during a: | The applicable limit is: |
|---|---|
| 6-percent period ..... | 20 |
| 5-percent period ..... | 13 |
| 4-percent period ..... | 7 |
| Other period ..... | 4. |

(B) APPLICABLE LIMIT NOT REDUCED.—An individual's applicable limit for any week shall in no event be less than the highest applicable limit in effect for any prior week for which emergency unemployment compensation was payable to the individual from the account involved.

(C) INCREASE IN APPLICABLE LIMIT.—If the applicable limit in effect for any week is higher than the applicable limit for any prior week, the applicable limit shall be the higher applicable limit, reduced (but not below zero) by the number of prior weeks for which emergency unemployment compensation was paid to the individual from the account involved.

(3) REDUCTION FOR EXTENDED BENEFITS.—The amount in an account under paragraph (1) shall be reduced (but not below zero) by the aggregate amount of extended compensation (if any) received by such individual relating to the same benefit year under the Federal-State Extended Unemployment Compensation Act of 1970.

(4) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

(c) DETERMINATION OF PERIODS.—

(1) IN GENERAL.—For purposes of this section, the terms "6-percent period", "5-percent period", "4-percent period", and "other period" mean, with respect to any State, the period which—

(A) begins with the third week after the first week for which the applicable trigger is on, and

(B) ends with the third week after the first week for which the applicable trigger is off.

(2) APPLICABLE TRIGGER.—In the case of a 6-percent period, 5-percent period, 4-percent period, or other period, as the case may be, the applicable trigger is on for any week with respect to any such period if the adjusted rate of insured unemployment in the State for the period consisting of such week and the immediately preceding 12 weeks falls within the applicable range.

(3) APPLICABLE RANGE.—For purposes of this subsection, the applicable range is as follows:

| In the case of a: | The applicable range is: |
|---|---|
| 6-percent period ..... | A rate equal to or exceeding 6 percent. |
| 5-percent period ..... | A rate equal to or exceeding 5 percent but less than 6 percent. |
| 4-percent period ..... | A rate equal to or exceeding 4 percent but less than 5 percent. |
| Other period ..... | A rate less than 4 percent. |

(4) SPECIAL RULES FOR DETERMINING PERIODS.—

(A) MINIMUM PERIOD.—Except as provided in subparagraph (B), if for any week beginning after October 5, 1991, a 6-percent period, 5-percent period, 4-percent period, or other period, as the case may be, is triggered on with respect to such State, such period shall last for not less than 13 weeks.

(B) EXCEPTION IF APPLICABLE RANGE INCREASES.—If, but for subparagraph (A), another period with a higher applicable range would be in effect for such State, such other period shall take effect without regard to subparagraph (A).

(5) NOTIFICATION BY SECRETARY.—When a determination has been made that a 6-percent period, 5-percent period, 4-percent period, or other period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no emergency unemployment compensation shall be payable to any individual under this Act for any week—

(A) beginning before the later of—

(i) October 6, 1991, or

(ii) the first week following the week in which an agreement under this Act is entered into, or

(B) beginning after July 4, 1992.

(2) TRANSITION.—In the case of an individual who is receiving emergency unemployment compensation for a week which includes July 4, 1992, such compensation shall continue to be payable to such individual in accordance with subsection (b) for any week beginning in a period of consecutive weeks for each of which the individual meets the eligibility requirements of this Act.

(3) REACHBACK PROVISIONS.—(A) IN GENERAL.—If—

(i) any individual exhausted such individual's rights to regular compensation (or extended compensation) under the State law after March 31, 1991, and before the first week following October 5, 1991 (or, if later, the week following the week in which the agreement under this Act is entered into), and

(ii) a 5-percent period, as described in subsection (c), is in effect with respect to the State for the first week following October 5, 1991,

such individual shall be entitled to emergency unemployment compensation under this Act in the same manner as if such individual's benefit year ended no earlier than the last day of such following week.

(B) LIMITATION OF BENEFITS.—In the case of an individual who has exhausted such individual's rights to both regular and extended compensation, any emergency unemployment compensation payable under subparagraph (A) shall be reduced in accordance with subsection (b)(3).

**SEC. 4. PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF EMERGENCY UNEMPLOYMENT COMPENSATION.**

(a) GENERAL RULE.—There shall be paid to each State which has entered into an agreement under this Act an amount equal to 100 percent of the emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

(b) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this Act or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this Act in respect of such compensation.

(c) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this Act shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this Act for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior cal-

endar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

**SEC. 5. FINANCING PROVISIONS.**

(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this Act.

(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this Act. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as established by section 905 of the Social Security Act) to the account of such State in the Unemployment Trust Fund.

(c) ASSISTANCE TO STATES.—There are hereby authorized to be appropriated without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act) in meeting the costs of administration of agreements under this Act.

**SEC. 6. FRAUD AND OVERPAYMENTS.**

(a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of emergency unemployment compensation under this Act to which he was not entitled, such individual—

(1) shall be ineligible for further emergency unemployment compensation under this Act in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

(b) REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment compensation under this Act to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(1) the payment of such emergency unemployment compensation was without fault on the part of any such individual, and

(2) such repayment would be contrary to equity and good conscience.

(c) RECOVERY BY STATE AGENCY.—

(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any emergency unemployment compensation payable to such individual under this Act or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the emergency unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

**SEC. 7. DEFINITIONS.**

For purposes of this Act:

(1) IN GENERAL.—The terms "compensation", "regular compensation", "extended compensation", "additional compensation", "benefit year", "base period", "State", "State agency", "State law", and "week" have the meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

(2) ELIGIBILITY PERIOD.—An individual's eligibility period shall consist of the weeks in the individual's benefit year which begin in a 6-percent period, 5-percent period, 4-percent period, or other period under this Act and, if the individual's benefit year ends within any such period, any weeks thereafter which begin in any such period. In no event shall an individual's period of eligibility include any weeks after the 39th week after the end of the benefit year for which the individual exhausted his rights to regular compensation or extended compensation.

(3) ADJUSTED RATE OF INSURED UNEMPLOYMENT.—The adjusted rate of insured unemployment shall be determined in the same manner as the rate of insured unemployment is determined under section 203 of the Federal-State Extended Unemployment Compensation Act of 1970, except that the total number of individuals exhausting rights to regular compensation for the 3 most recent months for which data are available shall be included in such determination in the same manner as the average weekly number of individuals filing claims for regular compensation.

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AMENDMENT NO. 989

On page 24, beginning with line 9, strike out all through page 36, line 4, and insert the following:

**SEC. 3. EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT.**

(a) IN GENERAL.—Any agreement under this Act shall provide that the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment compensation account with respect to such individual's benefit year.

(b) AMOUNT IN ACCOUNT.—

(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

(A) 100 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which the individual most recently received regular compensation, or

(B) the applicable limit times the individual's average weekly benefit amount for the benefit year.

(2) APPLICABLE LIMIT.—For purposes of this section—

(A) IN GENERAL.—Except as provided in this paragraph, the applicable limit shall be determined under the following table:

| In the case of weeks beginning during a: | The applicable limit is: |
|---|---|
| 5-percent period ..... | 13 |
| Other period ..... | 6. |

(B) APPLICABLE LIMIT NOT REDUCED.—An individual's applicable limit for any week shall in no event be less than the highest applicable limit in effect for any prior week for which emergency unemployment compensation was payable to the individual from the account involved.

(C) INCREASE IN APPLICABLE LIMIT.—If the applicable limit in effect for any week is higher than the applicable limit for any prior week, the applicable limit shall be the higher applicable limit, reduced (but not below zero) by the number of prior weeks for which emergency unemployment compensation was paid to the individual from the account involved.

(3) REDUCTION FOR EXTENDED BENEFITS.—The amount in an account under paragraph (1) shall be reduced (but not below zero) by the aggregate amount of extended compensation (if any) received by such individual relating to the same benefit year under the Federal-State Extended Unemployment Compensation Act of 1970.

(4) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

(c) DETERMINATION OF PERIODS.—

(1) IN GENERAL.—For purposes of this section, the terms "5-percent period" and "other period" mean, with respect to any State, the period which—

(A) begins with the third week after the first week for which the applicable trigger is on, and

(B) ends with the third week after the first week for which the applicable trigger is off.

(2) APPLICABLE TRIGGER.—In the case of a 5-percent period or other period, as the case may be, the applicable trigger is on for any week with respect to any such period if the adjusted rate of insured unemployment in the State for the period consisting of such week and the immediately preceding 12 weeks falls within the applicable range.

(3) APPLICABLE RANGE.—For purposes of this subsection, the applicable range is as follows:

| In the case of a: | The applicable range is: |
|---|---|
| 5-percent period ..... | A rate equal to or exceeding 5 percent. |
| Other period ..... | A rate less than 5 percent. |

(4) SPECIAL RULES FOR DETERMINING PERIODS.—

(A) MINIMUM PERIOD.—Except as provided in subparagraph (B), if for any week beginning after October 5, 1991, a 5-percent period or other period, as the case may be, is triggered on with respect to such State, such period shall last for not less than 13 weeks.

(B) EXCEPTION IF APPLICABLE RANGE INCREASES.—If, but for subparagraph (A), another period with a higher applicable range would be in effect for such State, such other period shall take effect without regard to subparagraph (A).

(5) NOTIFICATION BY SECRETARY.—When a determination has been made that a 5-percent period or other period is beginning or ending with respect to a State, the Secretary

shall cause notice of such determination to be published in the Federal Register.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no emergency unemployment compensation shall be payable to any individual under this Act for any week—

(A) beginning before the later of—

(i) October 6, 1991, or

(ii) the first week following the week in which an agreement under this Act is entered into, or

(B) beginning after July 4, 1992.

(2) TRANSITION.—In the case of an individual who is receiving emergency unemployment compensation for a week which includes July 4, 1992, such compensation shall continue to be payable to such individual in accordance with subsection (b) for any week beginning in a period of consecutive weeks for each of which the individual meets the eligibility requirements of this Act.

(3) REACHBACK PROVISIONS.—(A) IN GENERAL.—If—

(i) any individual exhausted such individual's rights to regular compensation (or extended compensation) under the State law after March 31, 1991, and before the first week following October 5, 1991 (or, if later, the week following the week in which the agreement under this Act is entered into), and

(ii) a 5-percent period, as described in subsection (c), is in effect with respect to the State for the first week following October 5, 1991,

such individual shall be entitled to emergency unemployment compensation under this Act in the same manner as if such individual's benefit year ended no earlier than the last day of such following week.

(B) LIMITATION OF BENEFITS.—In the case of an individual who has exhausted such individual's rights to both regular and extended compensation, any emergency unemployment compensation payable under subparagraph (A) shall be reduced in accordance with subsection (b)(3).

**SEC. 4. PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF EMERGENCY UNEMPLOYMENT COMPENSATION.**

(a) GENERAL RULE.—There shall be paid to each State which has entered into an agreement under this Act an amount equal to 100 percent of the emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

(b) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this Act or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this Act in respect of such compensation.

(c) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this Act shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this Act for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

**SEC. 5. FINANCING PROVISIONS.**

(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this Act.

(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this Act. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as established by section 905 of the Social Security Act) to the account of such State in the Unemployment Trust Fund.

(c) ASSISTANCE TO STATES.—There are hereby authorized to be appropriated without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act) in meeting the costs of administration of agreements under this Act.

**SEC. 6. FRAUD AND OVERPAYMENTS.**

(a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of emergency unemployment compensation under this Act to which he was not entitled, such individual—

(1) shall be ineligible for further emergency unemployment compensation under this Act in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

(b) REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment compensation under this Act to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(1) the payment of such emergency unemployment compensation was without fault on the part of any such individual, and

(2) such repayment would be contrary to equity and good conscience.

(c) RECOVERY BY STATE AGENCY.—

(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any emergency unemployment compensation payable to such individual under this Act or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the emergency unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

**SEC. 7. DEFINITIONS.**

For purposes of this Act:

(1) IN GENERAL.—The terms "compensation", "regular compensation", "extended compensation", "additional compensation", "benefit year", "base period", "State", "State agency", "State law", and "week" have the meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

(2) ELIGIBILITY PERIOD.—An individual's eligibility period shall consist of the weeks in the individual's benefit year which begin in a 5-percent period or other period under this Act and, if the individual's benefit year ends within any such period, any weeks thereafter which begin in any such period. In no event shall an individual's period of eligibility include any weeks after the 26th week after the end of the benefit year for which the individual exhausted his rights to regular compensation or extended compensation.

(3) ADJUSTED RATE OF INSURED UNEMPLOYMENT.—The adjusted rate of insured unemployment shall be determined in the same manner as the rate of insured unemployment is determined under section 203 of the Federal-State Extended Unemployment Compensation Act of 1970, except that the total number of individuals exhausting rights to regular compensation for the three most recent months for which data are available shall be included in such determination in the same manner as the average weekly number of individuals filing claims for regular compensation.

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AMENDMENT NO. 990

On page 36, beginning with line 7, strike all through line 13, and insert the following:

(a) REDUCTION IN LENGTH OF REQUIRED ACTIVE DUTY FOR DESERT STORM RESERVISTS.—Section 8521 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) In the case of a member of the armed forces who served on active duty in the Persian Gulf area of operations in connection with Operation Desert Storm, paragraph (1) of subsection (a) shall be applied by substituting '90 days' for '180 days'.

"(2) For purposes of paragraph (1), the term 'Operation Desert Storm" has the meaning given the term in section 3(1) of Public Law 102-25 (105 Stat. 77).".

(b) LIMITATIONS ON UNEMPLOYMENT COMPENSATION NOT TO APPLY IN CERTAIN CASES.—Subsection (c) of section 8521 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(3)(A) Paragraphs (1) and (2) shall not apply to a member of the armed forces on active duty who is—

"(i) involuntarily separated from the armed forces, or

"(ii) separated from the armed forces after being retained on active duty pursuant to

section 673c or 676 of title 10, United States Code.

"(B) This paragraph does not apply in the case of a dismissal, dishonorable discharge, or bad conduct discharge adjudged by a court-martial or a discharge under other than honorable conditions (as defined in regulations prescribed by the Secretary of the military department concerned).".

## DOMENICI AMENDMENT NOS. 991 AND 992

(Ordered to lie on the table.)

Mr. DOMENICI submitted two amendments intended to be proposed by him to the bill S. 1554, supra, as follows:

AMENDMENT NO. 991

To be inserted at the appropriate place in the bill:

**SEC. . DETERMINATION OF ELIGIBILITY.**

(a) IN GENERAL.—Notwithstanding any other provision of law or any other provision of this Act, no individual shall be entitled to receive emergency unemployment compensation provided under this Act if that individual's income or the household income in which the individual resides is in excess of 200 percent of the individual's or household's official poverty income line. The Secretary of Labor shall develop regulations to define income, household, and the period for income determination. For purposes of enforcing this section, the Secretary of the Treasury and the Secretary of Health and Human Services shall work cooperatively with the Secretary of Labor to provide data and information regarding the income of individuals applying for benefits under this Act.

(b) DEFINITION OF POVERTY.—The income level established under section (a) shall not be more than 200 percent of the official poverty income 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 the size involved.

AMENDMENT NO. 992

On page 24, beginning with line 17, strike all through page 30, line 16, and insert the following:

**SEC. 3. EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT.**

(a) IN GENERAL.—Any agreement under this Act shall provide that the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment compensation account with respect to such individual's benefit year.

(b) AMOUNT IN ACCOUNT.—

(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

(A) 100 percent of the total amount of regular compensation (including dependents' allowances payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which the individual most recently received regular compensation, or

(B) the applicable limit times the individual's average weekly benefit amount for the benefit year.

(2) APPLICABLE LIMIT.—For purposes of this section—

(A) IN GENERAL.—Except as provided in this paragraph, the applicable limit shall be determined under the following table:

| In the case of weeks beginning during a: | The applicable limit is: |
|---|---|
| 8-percent | 23 |
| 7-percent | 16 |
| 6-percent | 10 |
| Other period | 7 |

(B) APPLICABLE LIMIT NOT REDUCED.—An individual's applicable limit for any week shall in no event be less than the highest applicable limit in effect for any prior week for which emergency unemployment compensation was payable to the individual from the account involved.

(C) INCREASE IN APPLICABLE LIMIT.—If the applicable limit in effect for any week is higher than the applicable limit for any prior week, the applicable limit shall be the higher applicable limit, reduced (but not below zero) by the number of prior weeks for which emergency unemployment compensation was paid to the individual from the account involved.

(3) REDUCTION FOR EXTENDED BENEFITS.—The amount in an account under paragraph (1) shall be reduced (but not below zero) by the aggregate amount of extended compensation (if any) received by such individual relating to the same benefit year under the Federal-State Extended Unemployment Compensation Act of 1970.

(4) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependent's allowances) under the State law payable to such individual for such week for total unemployment.

(c) DETERMINATION OF PERIODS.—

(1) IN GENERAL.—For purposes of this section, the terms "8-percent period", "7-percent period", "6-percent period", and "other period" mean, with respect to any State, the period which—

(A) begins with the second Sunday of the month after the first month during which the applicable trigger for such period is on, and

(B) ends with the Saturday immediately preceding the second Sunday of the month after the first month during which the applicable trigger is off.

(2) APPLICABLE TRIGGER.—In the case of an 8-percent period, 7-percent period, 6-percent period, or other period, as the case may be, the applicable trigger is on for any week with respect to any such period if the average rate of total unemployment in the State for the period consisting of the most recent 6-calendar month period for which data are available—

(A) equals or exceeds 6 percent, and

(B) falls within the applicable range (as defined in paragraph (3)). Subparagraph (A) shall only apply in the case of an 8-percent period, 7-percent period, or 6-percent.

(3) APPLICABLE RANGE.—For purposes of this subsection, the applicable range is as follows:

| In the case of a: | The applicable range is: |
|---|---|
| 8-percent period | A rate equal to or exceeding 8 percent |
| 7-percent period | A rate equal to or exceeding 7 percent but less than 8 percent |
| 6-percent period | A rate equal to or exceeding 6 percent but less than 7 percent. |
| Other period | A rate less than 6 percent. |

(4) SPECIAL RULES FOR DETERMINING PERIODS.—

(A) MINIMUM PERIOD.—Except as provided in subparagraph (B), of any week beginning after October 5, 1991, an 8-percent period, 7-percent period, 6-percent period, or other period, as the case may be, is triggered on with respect to such State, such period shall be for not less than 13 weeks.

(B) EXCEPTION IF APPLICABLE RANGE INCREASES.—If, but for subparagraph (A), another period with a higher applicable range would be in effect for such State, such other period shall take effect without regard to subparagraph (A).

(5) NOTIFICATION BY SECRETARY.—When a determination has been made than an 8-percent period, 7-percent period, 6-percent period, or other period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

(d) DETERMINATION OF ELIGIBILITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law or any other provision of this Act, no individual shall be entitled to receive emergency unemployment compensation provided under this Act if that individual's income or the household income in which the individual resides is in excess of 200 percent of the individual's or household's official poverty income line. The Secretary of Labor shall develop regulations to define income, household, and the period for income determination. For purposes of enforcing this section, the Secretary of the Treasury and the Secretary of Health and Human Services shall work cooperatively with the Secretary of Labor to provide data and information regarding the income of individuals applying for benefits under this Act.

(2) DEFINITION OF POVERTY.—The income level established under section 3(d)(1) shall not be more than 200 percent of the official poverty income 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 the size involved.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no emergency unemployment compensation shall be payable to any individual under this Act for any week—

(A) beginning before the later of—

(i) October 6, 1991, or

(ii) the first week following the week in which an agreement under this Act is entered into, or,

(B) beginning after July 4, 1992.

(2) TRANSITION.—In the case of an individual who is receiving emergency unemployment compensation shall continue to be payable to such an individual in accordance with subsection (b) for any week beginning in a period of consecutive weeks for each of which the individual meets the eligibility requirements of this Act.

(3) REACHBACK PROVISIONS.—(A) IN GENERAL.—If—

(i) any individual exhausted such individual's right to regular compensation (or extended compensation) under the State law after March 31, 1991, and after before the first week following October, 1991 (or, if later, the week following the week in which the agreement under this Act is entered into), and

(ii) a period described in subsection (c)(2)(A) is in effect with respect to the State for the first week following October 5, 1991, such individual shall be entitled to emergency unemployment compensation under this Act in the same manner as if such individual's benefit year ended no earlier than the last day of such individual's benefit year ended no earlier than the last day of such following week.

(B) LIMITATION OF BENEFITS.—In the case of an individual who has exhausted such indi-

vidual's rights to both regular and extended compensation, and emergency unemployment compensation payable under subparagraph (A) shall be reduced in accordance with subsection (b)(3).

## KASTEN AMENDMENT NO. 993

(Ordered to lie on the table.)

Mr. KASTEN proposed an amendment to the bill S. 1554, supra; as follows:

At the end of the bill add the following new section:

**SEC. . SENSE OF THE SENATE WITH RESPECT TO PLANT OPENING AND JOB CREATION INCENTIVES.**

(a) FINDINGS.—The Senate finds that—

(1) Expanding unemployment benefits does nothing to prevent and reduce unemployment—it simply treats the symptoms instead of curing the underlying disease of anemic economic growth and lingering joblessness;

(2) The only real cure for unemployment is rapid economic growth which creates well-paying, private-sector jobs;

(3) Low-tax, incentive-based economic policies to promote work, investment, saving, and entrepreneurship caused the economic expansion of the 1980s which created 20 million new jobs and raised real middle American family income by 12 percent;

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Congress should immediately adopt legislation that promotes plant openings, economic growth, and job creation, and that such legislation include the following, incentives for work, saving, and investment:

(1) reduction in the tax rate on capital gains for both individuals and businesses, and indexation of the basis for inflation, to provide incentives for long-term investment in job-creating small business ventures, and to eliminate the unfair taxation of phantom gains due to inflation;

(2) permanent extension of the tax exclusion from gross income of the amounts paid for employee educational assistance to increase job opportunities for workers, and promote job advancement through training and education;

(3) establishment of enterprise zones with Federal tax incentives to promote small business investment and job creation in the Nation's economically distressed rural and urban areas; and

(4) phaseout of the Social Security earnings limitation over five years which would give America's senior citizens more freedom to work and produce.

## NATIONAL DEFENSE AUTHORIZATION ACT, FISCAL YEARS 1992 AND 1993

## BUMPERS AMENDMENT NO. 994

Mr. BUMPERS proposed an amendment to the bill S. 1507, supra, as follows:

Strike line 17, page 40, through line 12, page 41, and insert the following:

(A) not more than $840,000,000 shall be available for programs, projects, and activities within the Limited Defense System Program element;

(B) not more than $857,460,000 shall be available for programs, projects, and activities within the Theater Missile Defenses Program element;

(C) not more than $305,373,000 shall be available for programs, projects, and activities within the Space-Based interceptors program element;

(D) not more than $775,149,000 shall be available for programs, projects, and activities within the Other Follow-On Systems Program element;

(E) not more than $822,018,000 shall be available for programs, projects, and activities within the Research and Support Activities Program element; and

(F) not less than $1,000,000,000 shall be available solely for reducing the Federal Government budgetary deficit for fiscal year 1992.

## HATCH AMENDMENT NO. 995

(Ordered to lie on the table.)

Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 1554, supra, as follows:

At the appropriate place, insert the following:

TITLE I—ADULT AND YOUTH EMPLOYMENT AND TRAINING PROGRAMS AMENDMENTS

**SEC. 101. STATEMENT OF PURPOSE.**

Section 2 of the Job Training Partnership Act (hereinafter referred to as the "Act") is amended to read as follows:

"SEC. 2. It is the purpose of this Act to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency, thereby improving the quality of the workforce and enhancing the productivity and competitiveness of the Nation.".

**SEC. 102. DEFINITIONS.**

(a) IN GENERAL.—Section 4 of the Act is amended—

(1) by amending paragraph (3) to read as follows:

"(3) The term 'basic skills deficient' means reading or computing skills at or below the 8th grade level on a generally accepted standardized test or a comparable score on a criterion referenced test.".

(2) in paragraph (5) by inserting "Association of Farmworkers Opportunity Programs, literacy organizations, agencies or organizations serving older individuals," after "United Way of America,";

(3) in paragraph (8)(B)(i) by striking "level determined in accordance with criteria established by the Director of the Office of Management and Budget" and inserting in lieu thereof "income guidelines promulgated each year by the Secretary of Health and Human Services";

(4) in paragraph (8)(D) by inserting "subsections (a) and (c) of" after "under"; and

(5) in paragraph (8)(F) by striking "adult handicapped individual" and inserting "individual with a disability (adult or youth) or displaced homemaker";

(6) in paragraph (10) by striking "handicapped individual" and inserting "individual with a disability";

(7) in paragraph (22) by striking "Trust Territory of the Pacific Islands" and inserting in lieu thereof "Freely Associated States and the Republic of Palau";

(8) in paragraph (24) by—

(A) inserting "drug and alcohol abuse counseling and referral, individual and family counseling," after "health care,"; and

(B) striking "materials for the handicapped," and inserting "materials for individuals with disabilities, job coaches,";

(9) by striking paragraph (29) and inserting in lieu thereof the following:

"(29) The term 'dispaced homemaker' means an individual who has been providing unpaid services to family members in the home and who—

"(A) has been dependent either—

"(i) on public assitance and whose youngest child is within 2 years of losing eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601-618), or

"(ii) on the income of another family member but is no longer supported by that income, and

"(B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment."; and

(10) by adding the following new paragraphs after paragraph (29):

"(30) the term 'family' means two or more persons living in a single residence who are included in one of the following categories:

"(A) a husband, wife, and their dependent children;

"(B) a parent and dependent children; or

"(C) a husband and wife.

"(31) The term 'long term recipient' means an individual who has—

"(A) received cash payments made pursuant to part A of title IV of the Social Security Act (relating to the aid to families with dependent children program);

"(B) received general welfare assistance to Indians, as provided pursuant to the Act of November 2, 1921 (25 U.S.C. 13), commonly referred to as the Snyder Act;

"(C) received cash assistance and medical assistance for refugees made available pursuant to section 412(e) of the Immigration and Nationality Act; or

"(D) applied for and received benefits offered pursuant to title XVI of the Social Security Act (relating to supplemental security income programs) and title II of such Act (relating to Social Security Disability Insurance);

for 36 months during the 60-month period immediately preceding application for programs offered under this title.

"(32) The term 'educational agency' means—

"(A) a public local school authority having administrative control of elementary, middle or secondary schools or providing adult education;

"(B) a public or private institution which provides alternative middle or high school education;

"(C) any public education institution or agency having administrative control of secondary or post-secondary vocational education programs;

"(D) any institution legally authorized to provide post-secondary education; or

"(E) any post-secondary educational institution operated by or on behalf of any Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or under the Act of April 16, 1934.

"(33) The term 'school dropout' means an individual who is no longer attending any school nor subject to a compulsory attendance law and who has not received a secondary school diploma or a certificate from a program of equivalency for such a diploma.

"(34) The term 'JOBS' means the Job opportunities and Basic Skills Training Program authorized under part F of title IV of the Social Security Act.

"(35) The term 'hard-to-serve individuals' means individuals who meet at least 2 of the following criteria:

"(A) long-term recipient,
"(B) school dropout,
"(C) unemployed for 6 months or longer,
"(D) individual with a disability,
"(E) offender,
"(F) displaced homemaker,
"(G) homeless, or
"(H) older individual.".

(b) CONFORMING AMENDMENT.—Section 423(1) of the Act is amended by striking "handicapped individual" and inserting "individual with a disability";

**SEC. 103. PRIVATE INDUSTRY COUNCILS.**

(a) COMPOSITION AMENDMENTS.—(1) Section 102(a) of the Act is amended—

(A) by striking "and" at the end of paragraph (1); and

(B) by striking paragraph (2) and inserting in lieu thereof the following:

"(2) representatives of organized labor, and representatives of community-based organizations, who shall constitute not less than 15 percent of the membership of the council; and

"(3) representatives of each of the following:

"(A) educational agencies (representative of all educational agencies in the service delivery area);

"(B) vocational rehabilitation agencies;

"(C) public assistance agencies;

"(D) economic development agencies; and

"(E) the public employment service.".

(2) Section 102(c)(2) of the Act is amended to read as follows:

"(2) Education representatives on the council shall be selected from among individuals nominated by regional or local educational agencies, vocational education institutions, institutions of higher education (including entities offering adult education) or general organizations of such schools and institutions within the service delivery area.".

(3) Section 102(c)(3) of the Act is amended to read as follows:

"(3) The labor representatives on the council shall be selected from individuals recommended by recognized State and local labor organizations. If the State or local labor organization cannot adequately meet the labor representation on the private industry council then individual workers may be included on the council to complete the labor representation.

"(4) The remaining members of the council shall include additional representatives from all sectors represented on the council and from individuals recommended by interested organizations.".

(b) EFFECTIVE DATE.—No private industry council shall be considered to be in violation of the amendments made by subsection (a) of this section until 3 years after the date of enactment of this Act.

**SEC. 104. JOB TRAINING PLAN.**

(a) IN GENERAL.—Section 104(a) of the Act is amended by inserting "under title II" after "appropriated".

(b) CONTENTS.—Section 104(b) of the Act is amended to read as follows:

"(b) Each job training plan for the programs conducted for adults under part A of title II and for youth under part B of title II shall contain—

"(1) identification of the entity or entities which will administer the program and be the grant recipient of funds from the State;

"(2) if there is more than one service delivery area in a single labor market area, provisions for coordinating particular aspects of the service delivery program with other programs and service providers in the labor market area, including—

"(A) assessments of needs and problems in the labor market that form the basis for program planning;

"(B) provisions for ensuring access by program participants in the service delivery area to skills training and employment opportunities throughout the entire labor market; and

"(C) coordination or joint implementation of job development, placement, and other employer outreach activities;

"(3) a description of methods of complying with the coordination criteria contained in the Governor's coordination and special services plan;

"(4) a description of cooperative arrangements designed to enhance the provision of services, including—

"(A) agreements with educational agencies;

"(B) arrangements with other education, training and employment programs serving the disadvantaged which are authorized by Federal law; and

"(C) efforts to ensure the effective delivery of services to participants in coordination with local welfare agencies, other local agencies, community-based organizations, volunteer groups, business and labor organizations, and other training, education, employment, and social service programs;

"(5) goals and objectives for the programs, including—

"(A) a description of how the program will contribute to the economic self-sufficiency of participants, and the productivity of the local area and the Nation; and

"(B) performance goals established in accordance with standards prescribed under section 106;

"(6) goals for the training and placement of older individuals, displaced homemakers and other targeted populations, and a description of efforts to be undertaken to accomplish such goals, including—

"(A) efforts to expand outreach to older individuals, displaced homemakers, and other targeted populations who may be eligible for services under this Act,

"(B) efforts to expand awareness of training and placement opportunities for older individuals, displaced homemakers, and other targeted populations, and

"(C) types of services to be provided to address the special needs of older individuals, and other targeted populations;

"(7) adult and youth budgets for two program years and any proposed expenditures for the succeeding two program years, in such detail as is determined necessary by the entity selected to prepare this portion of the plan pursuant to section 103(b)(1)(B) and to meet the requirements of section 108;

"(8) procedures for identifying and selecting participants, and procedures for determining eligibility and methods used to verify eligibility;

"(9) a description of—

"(A) the assessment process that will identify each participant's skill levels and service needs;

"(B) the competency levels to be achieved by participants as a result of program participation;

"(C) a description of the services to be provided, including the estimated duration of service and the estimated training cost per participant; and

"(D) the procedures for evaluating the progress of participants in achieving competencies;

"(10) procedures, consistent with section 107, for selecting service providers which take into account past performance in job training, basic skills training, or related activities, fiscal accountability, and ability to meet performance standards, and the ability to provide services that can lead to achievement of competency standards for participants with identified deficiencies;

"(11) fiscal control (including procurement, monitoring and management information systems requirements), and accounting, audit and debt collection procedures, consistent with the provisions of section 164, to assure the proper disbursal of, and accounting for, funds received under title II; and

"(12) procedures for the preparation and submission of an annual report to the Governor which shall include—

"(A) a description of activities conducted during the program year;

"(B) characteristics of participants;

"(C) the extent to which applicable performance standards are met;

"(D) the extent to which the service delivery area has met its goals for the training and placement of older individuals, displaced homemakers and other targeted populations; and

"(E) a description of the number of older individuals, displaced homemakers and other targeted individuals trained and placed in unsubsidized employment, the socioeconomic characteristics of such older individuals, displaced homemakers and other targeted populations participating in the program, and wage and placement outcomes, including the extent to which such older individuals were placed in part-time employment, and the type of training received.".

**SEC. 105. REVIEW AND APPROVAL OF PLAN.**

Section 105(a)(1)(B)(ii) of the Act is amended by inserting "community based organizations," after "appropriate".

**SEC. 106. PERFORMANCE STANDARDS.**

(a) PERFORMANCE STANDARDS.—Section 106(a)(2) of the Act is amended to read as follows:

"(2) the criteria for measuring the basic return on the investment shall include indicators of long-term economic self-sufficiency as measured by increased educational attainment and occupational skills, increased employment and earnings, and reduction in welfare dependency.".

(b) MEASUREMENT OF PERFORMANCE STANDARDS.—Section 106(b) of the Act is amended to read as follows:

"(b)(1) In order to determine whether the basic measures specified in subsection (a) are achieved for programs under parts A and B of title II, the Secretary, in consultation with the Secretary of Education and the Secretary of Health and Human Services, shall prescribe performance standards.

"(2) The standards for adult programs under part A of title II shall be based on appropriate factors which may include—

"(A) placement in unsubsidized employment,

"(B) retention for more than 6 months in unsubsidized employment,

"(C) the increase in earnings, including hourly wages,

"(D) the attainment of basic skills and workplace competencies required to ensure continued employability in the local labor market, the acquisition of a high school diploma or a general equivalency diploma, and

"(E) the reduction in welfare payments.

"(3) In addition to the appropriate utilization of the factors described in paragraph (2), the standards for youth programs under part B of title II shall include—

"(A) attainment of employment competencies,

"(B) elementary, secondary, and postsecondary school completion or the equivalent thereof, and

"(C) enrollment in other training programs, apprenticeships or postsecondary education, or enlistment in the Armed Forces.

The Secretary may prescribe variations in the standards set forth in this paragraph to reflect the differences between in-school and out-of-school programs.

"(4) The private industry council, in consultation with the educational agencies, community-based organizations and the private sector, shall determine the levels for youth and adult competency standards based on such factors as entry skill levels and other hiring requirements.

"(5) The standards shall include provisions governing—

"(A) the base period prior to program participation that will be used;

"(B) a representative period after termination from the program that is a reasonable indicator of postprogram earnings and cash welfare payment reductions; and

"(C) cost effective methods for obtaining such data as is necessary to carry out this subsection, which, notwithstanding any other provision of law, may include access to earnings records, State employment security records, Federal Insurance Contributions Act records, State aid to families with dependent children records, statistical sampling techniques, and similar records or measures.

"(6) The Secretary shall prescribe performance standards relating gross program expenditures to various performance measures.

"(7) From funds available pursuant to the provisions of sections 202(d)(2)(C) and 252(d)(2)(C), each Governor shall award incentive funds to service delivery areas conducting programs under title II for achieving performance standards (except for standards relating to costs) based on factors designated by the Secretary, which shall include—

"(A) the extent to which hard-to-serve individuals and target groups are successfully served, and

"(B) the quality of service, such as the type or intensity of service provided.

"(c)(1) The Secretary shall prescribe performance standards for programs under title III based on participant placement and retention in unsubsidized employment.

"(2) Any performance standard that may be prescribed under paragraph (1) of this subsection for programs under title III shall make appropriate allowance for the difference in cost resulting from serving workers receiving needs-related payments under section 314(e).

"(d) Each Governor shall prescribe, within parameters established by the Secretary, variations in the standards issued under subsections (b) and (c) based upon specific economic, geographic, and demographic factors in the State and in service delivery areas and substate areas within the State, the characteristics of the population to be served, the demonstrated difficulties in serving the population, and the type of services to be provided.

"(e) The Governor may prescribe performance standards for programs under titles II and III in addition to those standards established by the Secretary under subsections (b) and (c).

"(f) The Secretary shall prescribe performance standards for programs under parts A, B and J of title IV.

"(g) The Secretary shall prescribe a system for adjustments in performance standards for target populations to be served, including Native Americans, migrant and seasonal farmworkers, disabled and Vietnam era veterans, including veterans who served in the Indochina Theater between August 5, 1964, and May 7, 1975, offenders, and displaced homemakers, taking into account their special circumstances.

"(h)(1) The Secretary may modify the performance standards under this section not more often than once every two program years and such modifications shall not be retroactive.

"(2) Notwithstanding paragraph (1), the Secretary may modify standards relating to programs under part B of title IV each program year.

"(3) The Secretary shall prepare and submit a report to the Congress containing any modifications established under paragraphs (1) and (2), and the reasons for such modifications.

"(i) The National Commission on Employment Policy shall—

"(1) advise the Secretary in the development of performance standards under this section for measuring results of participation in job training and in the development of parameters for variations of such standards referred to in subsection (d),

"(2) evaluate the usefulness of such standards as measures of desired performance, and

"(3) evaluate the impacts of such standards (intended or otherwise) on the choice of who is served in service delivery areas, what services are provided, and the costs of such services in service delivery areas.

"(j)(1) The Governor shall provide technical assistance to service delivery areas and substate areas within the State which do not meet performance standards. If the failure to meet performance standards persists for a second year, the Governor shall impose a reorganization plan. Such plan may restructure the private industry council, prohibit the use of designated service providers or make such other changes as the Governor deems necessary to improve performance. The Governor may also select an alternate entity to administer the program for the service delivery area or substate area.

"(2) The alternate administrative entity may be a newly formed private industry council or any agency jointly selected by the Governor and the chief elected official of the largest unit of general local government in the service delivery area or substate area.

"(3) No change may be made under this subsection without an opportunity for a hearing before a hearing officer.

"(4) The decision of the Governor may be appealed to the Secretary, who shall make a final decision within 60 days of the receipt of the appeal.".

**SEC. 107. SELECTION OF SERVICE PROVIDERS.**

Section 107 of the Act is amended by adding at the end thereof the following new subsections:

"(e) The selection of service providers shall be made on a competitive basis to the maximum extent possible, and shall include at a minimum—

"(1) a determination of the ability of the service provider to meet program design specifications established by the administrative entity that take into account the purpose of the Act and the goals established by the Governor in the Coordination and Special Services Plan; and

"(2) documentation of compliance with procurement standards established by the Governor pursuant to section 164, including the reasons for selection.

"(f) In the selection of service providers to serve older individuals, displaced homemakers, and other targeted populations, the service delivery area shall give priority to those national, State and local agencies and organizations that have a record of demonstrated effectiveness in providing training and employment services to such older individuals, displaced homemakers and other targeted populations.".

**SEC. 108. LIMITATION ON CERTAIN COSTS.**

(a) LIMITATION ON CERTAIN COSTS.—Section 108(a) of the Act is amended to read as follows:

"(a) IN GENERAL.—(1) Except as provided in section 141(d)(3), funds expended for allowable activities under this Act shall be charged to appropriate cost categories.

"(2) For programs under this Act, administration does not include the cost of activities directly related to the provision of services to eligible individuals.".

(b) SPECIAL RULE.—Section 108(b) of the Act is amended to read as follows:

"(b)(1) Of the funds available to a service delivery area for any fiscal year under parts A and B of title II—

"(A) not more than 20 percent shall be expended for administration; and

"(B) not more than 40 percent shall be expended for administration and costs specified in paragraph (2).

"(2) For purposes of paragraph (1)(B), the costs specified in this paragraph are—

"(A) 50 percent of work experience expenditures under part A of title II;

"(B) 50 percent of work experience expenditures under part B of title II that are used to provide work experience in excess of 250 hours for a participant during nonsummer months;

"(C) supportive services; and

"(D) needs-based payments and performance-based incentives to participants.

"(3) For purposes of paragraph (1), each service delivery area shall ensure that for all services provided to participants through contracts, grants, or other agreements with a service provider, such contract, grant, or agreement shall include, where appropriate, proportionate amounts necessary for administrative costs and supportive services.".

(c) EXPENDITURES.—Section 108(c) of the Act is amended—

(1) in paragraph (1) by inserting "(1)(B)" after "(b)";

(2) in paragraph (2) by inserting "(1)(B)" after "(b)" the first time it appears; and

(3) in paragraph (3) by—

(A) inserting "(1)(B)" after "(b)" the first time it appears; and

(B) striking "(a)" and inserting "(b)(1)(A)".

**SEC. 109. SERVICE DELIVERY AREA TRANSFER AND AGREEMENT.**

(a) IN GENERAL.—Part A of title I of the Act is amended by adding the following new sections at the end thereof;

"SERVICE DELIVERY AREA TRANSFER AND AGREEMENT

"SEC. 109. (a) Any service delivery area may enter into an agreement with another service delivery area to share the cost of educating, training, and placing individuals participating in programs assisted under this Act, including the provision of supportive services. Such agreement shall be approved by an individual representing each private industry council providing guidance to the service delivery area.

"(b) Each service delivery area entering into a service delivery area agreement pursuant to this section shall be credited under the appropriate performance standards.

"REALLOTMENT

"SEC. 110. (a) The Secretary is authorized to reallot among States any amounts allotted parts A and B of title II to the extent that the Secretary determines that the State

or one of the State's service delivery areas will not be able to spend such amounts within a reasonable period of time.

"(b)(1) The Secretary shall provide 30 days advance notice to the Governor and to the general public of any reallotment. During such period comments may be submitted to the Secretary.

"(2) After considering any comments submitted during such period, the Secretary shall notify the Governor of any decision to reallot funds, and shall publish such decision in the Federal Register.

"(3) In realloting any funds the Secretary shall give priority to States and service delivery areas which have satisfactorily spent the previous fiscal year's allotment and which have experienced high rates of unemployment for an extended period of time.

"REALLOTMENT OF FUNDS TO INCREASE THE AMOUNT AVAILABLE FOR STATE ADMINISTRATION

"SEC. 111. (a) The Governors of the seventeen States receiving the smallest total allotments pursuant to sections 202(d)(2)(A) and 252(d)(2)(A), as determined by the Secretary, may request authority from the Secretary to expend funds allotted under sections 202(c)(1), 202(d)(2)(B), 202(d)(2)(C), 252(c)(1), 252(d)(2)(B), and 252(d)(2)(C), for the purposes described in sections 202(d)(2)(A) and 252(d)(2)(A). The Secretary may grant authority for the Governor to expend, for such purposes, any amount not in excess of six-ninths of the total amount allotted to the State pursuant to sections 202(d) and 252(d), if such amount does not exceed the amount allotted to the State receiving the eighteenth smallest total allotment pursuant to sections 202(d)(2)(A) and 252(d)(2)(A).

"(b) A request made by a Governor pursuant to subsection (a) shall be submitted with the Governor's coordination and special services plan, or modification thereof, containing such information as the Secretary may reasonably require, and shall include at a minimum—

"(1) the additional amount requested for expenditure for the purposes described in sections 202(d)(2)(A) and 252(d)(2)(A),

"(2) the justification for the additional amount requested, and

"(3) an identification of the source of the funds to be reallotted.

"(c) In the event the additional funds requested by the Governor are to be reallotted from the funds allotted to service delivery areas pursuant to sections 202(c)(1) and 252(c)(1), the allotment available to each service delivery area within the State shall be ratably reduced. In making such reduction, the requirements of sections 202(c)(3)(A) and 252(c)(3)(A) shall remain applicable.".

(b) TECHNICAL AMENDMENT.—The table of contents of the Act is amended by adding after "Sec. 108. Limitation on certain costs." the following:

"Sec. 109. Service delivery area transfer and agreement.
"Sec. 110. Reallotment.
"Sec. 111. Reallotment of funds to increase the amount available for State administration.".

**SEC. 110. GOVERNOR'S COORDINATION AND SPECIAL SERVICES PLAN.**

(a) IN GENERAL.—Section 121(b) of the Act is amended by—

(1) amending paragraph (1) by inserting the following new sentence after the first sentence: "The plan shall also include criteria for coordinating activities under this Act with programs and services provided by State and local agencies on aging, and programs operated under title V of the Older Americans Act.";

(2) amending paragraph (2) to read as follows:

"(2) The plan shall describe the measures taken by the State to ensure coordination and avoid duplication of programs between the State agencies administering the JOBS program and programs under title II in the planning and delivery of services. The plan shall describe the procedures developed by the State to ensure that the State JOBS plan is consistent with the coordination criteria specified in the plan and shall identify the procedures developed to provide for the review of the JOBS plan by the State Job Training Coordinating Council.";

(3) redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively;

(4) inserting the following new paragraph after paragraph (2):

"(3) The plan shall describe the projected use of resources, including oversight of program performance, program administration, program financial management, capacity building, priorities and criteria for State incentive grants, and performance goals for State supported programs. The description of capacity building shall include the Governor's plans for research and demonstration projects, technical assistance for service delivery areas and service providers, interstate technical assistance and training arrangements, and other coordinated technical assistance arrangements for service delivery areas and service providers pursuant to the direction of the Secretary."; and

(5) amending paragraph (4) (as redesignated in paragraph (2)) by—

(A) striking "and" at the end of subparagraph (A);

(B) striking the period at the end of subparagraph (B) and inserting in lieu thereof a semicolon and "and"; and

(C) inserting at the end thereof the following new subparagraph (C):

"(C) services to older workers, including plans for facilitating the provision of services across service delivery areas within the State, as provided in section 104(b)(2).".

(b) COORDINATION AND SPECIAL SERVICES ACTIVITIES.—Section 121(c) is amended—

(1) in paragraph (7) by inserting after the paragraph designation the following: "coordination of activities relating to part A of title II with";

(2) by striking "and" at the end of paragraph (9);

(3) by striking the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and "and"; and

(4) by inserting the following new paragraph at the end thereof:

"(11) initiatives undertaken pursuant to the State innovation and coordination program set forth in part C of title II.".

**SEC. 111. REPEALERS.**

(a) IN GENERAL.—Sections 123 and 124 of the Act are repealed.

(b) REDESIGNATION.—Sections 125, 126, and 127 of the Act are redesignated as sections 123, 124, and 125, respectively.

(c) TECHNICAL AMENDMENT.—The table of contents relating to part B of title I is amended by—

(1) striking the items relating to sections 123 and 124; and

(2) redesignating the items relating to sections 125, 126, and 127 as the items relating to sections 123, 124, and 125, respectively.

**SEC. 112. GENERAL REQUIREMENTS.**

(a) IN GENERAL.—Section 141(d)(3) of the Act is amended by—

(1) inserting "(A)" after the paragraph designation; and

(2) inserting the following new subparagraph:

"(B) Tuition charges for training or education provided by an institution of higher education or postsecondary institution which are not more than the charges for such training or education made available to the general public do not require a breakdown of cost components.".

(b) LIMITATION.—Section 141(g) of the Act is amended by—

(1) inserting "(1)" after the subsection designation; and

(2) inserting the following new paragraph (2):

"(2) On-the-job training authorized under the Act shall be limited in duration to a period not in excess of that generally required for acquisition of skills needed for the position within a particular occupation, but in no event shall exceed 6 months unless the total number of hours of such training is less than 500 hours. In making this determination, consideration shall be given to recognized reference material (such as the Dictionary of Occupational Titles), the content of the participant's training, and the participant's service strategy.".

(c) PROGRAM INCOME.—Section 141 of the Act is further amended by—

(1) striking subsection (m); and

(2) redesignating subsections (n), (o), and (p) as subsections (m), (n), and (o), respectively.

(d) PUBLIC SERVICE EMPLOYMENT.—Section 141(o) of the Act (as amended by subsection (c)(2)) is further amended by striking "part B of this title or part A of".

**SEC. 113. FISCAL CONTROLS; SANCTIONS.**

(a) PROCUREMENT.—Section 164(a) of the Act is amended to read as follows:

"(a)(1) Each State shall establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, Federal funds paid to the recipient under titles II and III. Such procedures shall ensure that all financial transactions are conducted and records maintained in accordance with generally accepted accounting principles.

"(2) The Governor shall prescribe and implement procurement standards to ensure fiscal accountability and prevent fraud and abuse in programs administered under this Act. Such standards shall, at a minimum, include provisions to ensure that, for States, substate areas, and service delivery areas—

"(A) procurements shall be conducted in a manner providing full and open competition;

"(B) the use of sole source procurements shall be minimized to the extent practicable, but in every case shall be justified;

"(C) procurements shall include an analysis of the reasonableness of costs and prices;

"(D) procurements shall not provide excess program income (for nonprofit and governmental entities) or excess profit (for private for profit entities), and that appropriate factors shall be utilized in determining whether such income or profit is excessive, such as—

"(i) the complexity of the work to be performed;

"(ii) the risk borne by the contractor; and

"(iii) market conditions in the surrounding geographical area;

"(E) procurements shall clearly specify deliverables and the basis for payment;

"(F) written procedures shall be established for procurement transactions;

"(G) no grantee, contractor, subgrantee or subcontractor shall engage in any conflict of interest, actual or apparent, in the selection, award and administration of a contract or grant under this Act; and

"(H) all grantees and subgrantees shall conduct oversight to ensure compliance with procurement standards.

"(3) The Governor shall annually conduct on-site monitoring of each service delivery area and substate area within the State to ensure compliance with the procurement standards established pursuant to paragraph (2).

"(4) If the Governor determines that a service delivery area or substate area is not in compliance with the procurement standards established pursuant to paragraph (2), the Governor shall—

"(A) require corrective action to secure prompt compliance; and

"(B) impose the sanctions provided under subsections (c) and (e) in the event of failure to take the required corrective action.

"(5) The Governor shall submit to the Secretary the procurement standards established pursuant to paragraph (2), and shall annually certify to the Secretary that—

"(A) the State's procurement standards fully satisfy the requirements contained in paragraph (2);

"(B) the State has monitored substate areas and service delivery areas to ensure compliance with the procurement standards established pursuant to paragraph (2); and

"(C) the State has taken appropriate action to secure compliance pursuant to paragraph (4).

"(6) The Secretary shall annually review the procurement standards established pursuant to paragraph (2) and shall annually notify the appropriate Committees of the Congress whether the requirements contained in paragraph (5) have been satisfied.

"(7) If the Secretary determines that the Governor has not fulfilled the requirements of this subsection, the Secretary shall—

"(A) require corrective action to secure prompt compliance; and

"(B) impose the sanctions provided under subsection (g) in the event of failure of the Governor to take the required corrective action.

"(8)(A) The Secretary, in consultation with the Inspector General, shall review the implementation of the provisions of this subsection and submit a report to the Congress, not later than October 1, 1993 evaluating the effectiveness of such provisions in ensuring fiscal accountability and containing such recommendations as the Secretary deems appropriate.

"(B) The Secretary shall provide for an independent study examining the amount of program income received by service providers pursuant to this Act and the use of such income, and shall submit the study, accompanied by such recommendations as the Secretary deems appropriate, to the Congress not later than November 1, 1993.".

(b) PROGRAM INCOME.—Section 164 of the Act is further amended by—

(1) redesignating subsections (b), (c), (d), (e), (f), (g), and (h), as subsections (c), (d), (e), (f), (g), (h) and (i), respectively; and

(2) inserting the following new subsection after subsection (a):

"(b)(1) Income under any program administered by a public or private nonprofit entity under this Act may be retained by such entity only if such income is used to continue to carry out such program, and may be used for such purposes notwithstanding the expiration of financial assistance for such program.

"(2) Income subject to the requirements of paragraph (1) shall include—

"(A) receipts from goods or services provided as a result of activity funded under the Act; and

"(B) funds provided to a service provider under the Act which are in excess of the costs associated with the services provided.

"(3) For the purposes of this subsection, each public or private nonprofit entity receiving financial assistance under this Act shall maintain records sufficient to determine the amount of income received and the purposes for which such income is expended.".

**SEC. 114. REPORTS, RECORDKEEPING, AND INVESTIGATIONS.**

(a) IN GENERAL.—Section 165(c) of the Act is amended by—

(1) striking ", and" at the end of paragraph (1), and inserting in lieu thereof a semicolon;

(2) striking the period at the end of paragraph (2) and inserting in lieu thereof a semicolon and "and"; and

(3) inserting the following new paragraph:

"(3) monitor the performance of service providers in complying with the terms of grants, contracts, or other agreements made pursuant to this Act.".

(b) RETENTION OF RECORDS.—Section 165 of the Act is further amended by inserting at the end thereof the following new subsection:

"(d) The Governor shall ensure that procedures are developed for retention of all records pertinent to all grants and agreements under this Act, including financial, statistical, property and participant records and supporting documentation. For funds allotted to a State for any program year, records must be retained for 2 years following the date on which the annual expenditure report containing the final expenditures charged to such program year's allotment is submitted to the Secretary. Records for nonexpendable property shall be retained for a period of 3 years after final disposition of the property.".

**SEC. 115 ESTABLISHMENT OF ADULT OPPORTUNITY PROGRAM.**

(a) IN GENERAL.—Part A of title II of the Act is amended to read as follows:

"PART A—ADULT OPPORTUNITY PROGRAM

"STATEMENT OF PURPOSE

"SEC. 201. It is the purpose of this part to establish programs to prepare adults for participation in the labor force by increasing occupational and educational skills resulting in improved long-term employability, increased employment and earnings, and reduced welfare dependency.

"ALLOTMENT

"SEC. 202. (a) Not more than one quarter of one percent of the amount appropriated pursuant to section 3(a)(1) for each fiscal year and available for this part shall be allotted among Guam, the Virgin Islands, American Samoa, the Freely Associated States, the Republic of Palau and the Commonwealth of the Northern Mariana Islands.

"(b) Of the amount available to carry out the provisions of this part that remains after the allotment is made under subsection (a), the Secretary shall reserve not more than 5 percent to carry out part C of this title.

"(c)(1) After determining the amounts to be allotted under subsections (a) and (b), 91 percent of the remainder shall be allotted by the Secretary to the States for allocation to service delivery areas within each State. Each State shall allocate such funds to the service delivery areas in such amounts as determined by the Secretary pursuant to paragraph (2). The remaining 9 percent shall be allotted in accordance with subsection (d).

"(2) Subject to the provisions of paragraph (3), of the amounts allotted to services delivery areas under this subsection for each fiscal year—

"(A) 50 percent shall be allotted on the basis of the relative number of economically disadvantaged adults within each service delivery area as compared to the total number of economically disadvantaged adults in all service delivery areas in all States;

"(B) 25 percent shall be allotted on the basis of the relative concentration of economically disadvantaged adults within each service delivery area as compared to the total concentration of economically disadvantaged adults in all service delivery areas in all States; and

"(C) 25 percent shall be allotted on the basis of the relative number of unemployed individuals who reside in each service delivery area as compared to the total number of unemployed individuals in all service delivery areas in all States.

"(3)(A) No service delivery area shall be allocated less than 90 percent, or more than 115 percent, of its allocation percentage under this part for the fiscal year preceding the fiscal year for which the determination is made. If the amounts appropriated pursuant to section 3(a) are not sufficient to provide an amount equal to at least 90 percent of such allocation percentages to each such area, the amounts allocated to each area shall be ratably reduced.

"(B)(i) Except as otherwise provided in this subparagraph, the allocation percentage for a service delivery area is the percentage which the service delivery area received of the total amount allocated under this part for such fiscal year to all service delivery areas in all States.

"(ii) The allocation percentage for fiscal year 1992 shall be the percentage of funds allocated for adult programs under title II to the service delivery area during the preceding fiscal year.

"(C) Notwithstanding subparagraph (A), the total allocation under this subsection for all service delivery areas within any one State for each fiscal year shall not be less than one-quarter of 1 percent of the total amounts available for allotment under this subsection for such fiscal year.

"(D) The private industry council in each service delivery area may reserve not more than 10 percent of the funds received under this part for experimental programming for hard-to-serve individuals. The Comptroller General shall conduct a study to review and assess such experimental programs and post program results and shall submit the findings to the appropriate committees of Congress before September 30, 1995.

"(4)(A) For the purposes of this section—

"(i) the term 'economically disadvantaged adult' means an adult who is aged 22 through 72, and who has, or is a member of a family which has, received a total family income which, in relation to family size, was not in excess of the higher of (I) the poverty income guidelines promulgated each year by the Secretary of Health and Human Services, or (II) 70 percent of the lower living standard income level; and

"(ii) the term 'concentration' means the number of economically disadvantaged adults in excess of 10 percent of the adult population in the service delivery area.

"(B) For the purposes of subparagraph (A), and to the extent practical, the Secretary shall exclude college students and members of the Armed Forces from the number of economically disadvantaged individuals.

"(d)(1) Subject to the provisions of section 453(e)(5), the remainder available for allotment under this part shall be allotted to the States for the activities described in paragraph (2). The allotment to each State shall

be based upon the relative amount of funds avaialble to all service delivery areas within such State under subsection (c) as compared to the total amount of funds available to all service delivery areas in all States under subsection (c).

"(2) Of the allotment available to each State for each fiscal year under paragraph (1)—

"(A) four-ninths shall be available for overall administration, management, and auditing activities relating to programs under this title and for activities under sections 121 and 122 of the Act;

"(B) two-ninths shall be available for technical assistance in developing the overall capability of the job training system within the State, including the development and training of State and local service delivery area staff, service provider staff, the development of information and exemplary program activities, and the conduct of research and other activities designed to improve the level, degree, and goals of programs conducted under this Act; and

"(C) three-ninths shall be available to provide incentive grants authorized under section 106(b)(7).

"(e)(1) For fiscal year 1992, the total of the amount allotted to any State under subsections (c) and (d) and available to such State under subsection (b) shall not be less than 100 percent of the amount allotted to such State to carry out adult programs under title II in fiscal year 1989.

"(2) The Secretary shall ratably adjust the amounts allotted under subsections (c) and (d) and available under subsection (b) to carry out the requirements of paragraph (1). In making such adjustments, the requirements of subsection (c)(3)(A) shall remain applicable.

"ELIGIBILITY FOR SERVICES

"SEC. 203. (a)(1) An individual shall be eligible to participate in the program under this part only if such individual is—

"(A) 22 years of age or older; and

"(B) economically disadvantaged.

"(2) Not less than 65 percent of the participants in a program under this part in each service delivery area shall be individuals who, in addition to meeting the requirements of paragraph (1), are included in one or more of the following categories:

"(A) basic skills deficient;

"(B) school dropout;

"(C) recipients of aid to families with dependent children who either meet the requirements of section 403(l)(2)(B) of the Social Security Act or have been provided an employability plan in accordance section 482(b) of the Social Security Act;

"(D) individual with a disability;

"(E) homeless, as defined by subsections (a) and (c) of section 103 of the Stewart B. McKinney Homeless Assistance Act;

"(F) unemployed for the previous 6 months or longer;

"(G) offender;

"(H) limited English proficient; and

"(I) a category established pursuant to subsection (b).

"(3) Not more than 10 percent of all participants in programs assisted under this part in each service delivery area may be individuals who are not economically disadvantaged if such individuals are age 22 or older and experience 1 or more barriers to employment. Such barriers may include, but are not limited to, the categories described in paragraph (2), or categories such as, displaced homemakers, older workers, veterans, alcoholics or addicts.

"(4) Not less than 5 percent of the funds available under this part to each service delivery area shall be expended to provide services to eligible individuals ages 55 or older. In addition, each service delivery area shall make special efforts to meet the goals identified in the job training plan pursuant to section 104(b)(6) relating to the number of older individuals to be served.

"(b) A service delivery area conducting a program under this part may add one category of individuals who face serious barriers to employment to the categories of eligible individuals specified in subsection (a)(2) if—

"(1) the service delivery area submits a request to the Governor identifying the additional category of individuals and justifying the inclusion of such category;

"(2) the Governor approves the request submitted pursuant to paragraph (1) and transmits the request to the Secretary; and

"(3) the Secretary approves the request submitted pursuant to paragraph (2).

"(c) A service delivery area may transfer not more than 10 percent of the funds provided under this part to part B of this title for youth programs if a description of such transfer is included in the job training plan pursuant to section 104 and the Governor approves the transfer pursuant to section 105.

"PROGRAM DESIGN

"SEC. 204. (a) PROGRAM DESIGN.—The program assisted under this part shall include—

"(1) an assessment of each participant's skill levels and service needs, including such factors as basic skills, occupational skills, prior work experience, and supportive service needs, provided that a new assessment of a participant is not required if the program determines it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program, such as the JOBS program;

"(2) development of service strategies which shall identify the employment goal, the appropriate achievement objectives, and the appropriate sequence of services for participants taking into account the assessments conducted pursuant to paragraph (1);

"(3) a review of each participant's progress in meeting the objectives of the service strategy; and

"(4) the following services, to be made available to a participant where the assessment and the service strategy indicate such services are appropriate:

"(A) basic skills training; and

"(B) occupational skills training.

"(b) ADDITIONAL SERVICES.—Subject to the limitations contained in subsection (c), services which may be made available to each participant under this part may include, but are not limited to—

"(1) outreach to make individuals aware of, and encourage the use of, employment and training services;

"(2) literacy and bilingual training;

"(3) on-the-job training;

"(4) education-to-work transition activities;

"(5) work experience;

"(6) vocational exploration;

"(7) pre-apprenticeship programs;

"(8) attainment of certificates of high school equivalence;

"(9) skill upgrading and retraining;

"(10) on-site industry specific training programs supportive of industrial and economic development;

"(11) programs which combine workplace training with related instruction;

"(12) entrepreneurial training;

"(13) programs of advanced career training which provide a formal combination of on-the-job and institutional training and internship assignments which prepare individuals for career employment;

"(14) training programs operated by the private sector, including those operated by labor organizations or by consortia of private sector employers utilizing private sector facilities, equipment and personnel to train workers in occupations for which demand exceeds supply;

"(15) supportive services;

"(16) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of that training;

"(17) coordinated programs with other Federal employment-related activities;

"(18) counseling;

"(19) job search skills training and assistance;

"(20) job clubs;

"(21) provision of occupational and labor market information;

"(22) specialized surveys not available through other labor market information sources;

"(23) programs to develop work habits and other services to individuals to help them obtain and retain employment;

"(24) development of job openings;

"(25) disseminating information on program activities to employers;

"(26) need-based payments;

"(27) case management services;

"(28) job placement; and

"(29) post-program follow-up services.

"(c)(1) Basic skills training authorized under this part shall, where appropriate, have a workplace context and be integrated with occupational skills training.

"(2)(A) Except as provided in subparagraph (B), job search, job search skills training, job clubs, and work experience authorized under this part shall be accompanied by other services designed to increase a participant's basic education or occupational skills.

"(B) The program under this part may provide job search, job search skills training and job clubs activities to a participant without the additional services described in subparagraph (A) only if—

"(i) the participant's assessment and service strategy indicate that the additional services are not appropriate; and

"(ii) the activities are not available to the participant through the employment service or other public agencies.

"(3) Needs-based payments authorized under this part shall be limited to payments necessary for participation in the program under this part in accordance with a locally developed formula or procedure.

"(4) Counseling and supportive services authorized under this part may be provided to a participant for a period up to one year after the participant's completion of the program.

"(5) The service strategy developed pursuant to section 204(a)(2) shall not be considered a contract.

"COOPERATIVE ARRANGEMENTS

"SEC. 205. (a) In conducting the program under this part, the service delivery area shall establish appropriate cooperative arrangements with other programs authorized under Federal law. Such programs shall include, where feasible, programs authorized by—

"(1) the Adult Education Act;

"(2) the Carl D. Perkins Vocational Education Act;

"(3) the Wagner-Peyser Act;

"(4) part F of title IV of the Social Security Act;

"(5) the employment program established pursuant to section 6(d) of the Food Stamp Act of 1977;

"(6) the National Apprenticeship Act;
"(7) the Rehabilitation Act of 1973;
"(8) title V of the Older Americans Act of 1965;
"(9) chapter 2 of title II of the Trade Act of 1974; and
"(10) the Stewart B. McKinney Homeless Assistance Act.

"(b) In addition to the cooperative arrangements required under subsection (a), each service delivery area receiving financial assistance under this part shall establish other appropriate cooperative arrangements to enhance the provision of services under this part. Such cooperative arrangements may be established with local educational agencies, local service agencies, public housing agencies, community-based organizations, literacy organizations, business and labor organizations, volunteer groups working with disadvantaged adults, and other training, education, employment, economic development, and social service programs.

"STUDIES RELATING TO PLACEMENT AND TARGET POPULATIONS

"SEC. 206. (a) The Comptroller General of the United States shall conduct a study to determine how many and what percentage of adults assisted under this part remain employed for at least 9 months after receiving assistance under this part. The Comptroller General shall submit the findings to the appropriate committees of Congress within 3 years of the date of enactment of this Act.

"(b) Not later than December 30, 1993, the Secretary of Labor shall report to Congress regarding the extent to which older individuals and displaced homemakers are served under this Act, the socioeconomic characteristics of older individuals and displaced homemakers who are program participants, the effectiveness of the services received, and wage and placement outcomes, including the extent to which older individuals are placed in part-time employment.".

(b) TECHNICAL AMENDMENT.—(1) The part heading relating to part A of title II is amended to read as follows:

"PART A—ADULT OPPORTUNITY PROGRAM"

(2) The table of contents relating to part A of title II of the Act is amended to read as follows:

"Sec. 201. Statement of purpose.
"Sec. 202. Allotment.
"Sec. 203. Eligibility for services.
"Sec. 204. Program design.
"Sec. 205. Cooperative arrangements.
"Sec. 206. Studies relating to placement and target populations.".

**SEC. 116. ESTABLISHMENT OF YOUTH OPPORTUNITY PROGRAM.**

(a) IN GENERAL.—Part B of title II of the Act is amended to read as follows:

"PART B—YOUTH OPPORTUNITY PROGRAM

"STATEMENT OF PURPOSE

"SEC. 251. The purpose of the programs assisted under this part is to—

"(1) improve the long-term employability of youth;
"(2) enhance the educational and occupational skills of youth;
"(3) encourage school completion or enrollment in alternative school programs;
"(4) increase the employment and earnings of youth;
"(5) reduce welfare dependency; and
"(6) assist youth in addressing problems which impair their ability to make successful transitions from school to work, apprenticeship, the military or postsecondary education and training.

"ALLOTMENT

"SEC. 252. (a) Not more than one-quarter of one percent of the amount appropriated pursuant to section 3(b) for each fiscal year and available for this part shall be allotted among Guam, the Virgin Islands, American Samoa, the Freely Associated States, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands.

"(b) Of the amount available to carry out the provisions of this part that remains after the allotment is made under subsection (a), the Secretary shall reserve not more than 5 percent to carry out part C of this title.

"(c)(1) After determining the amounts to be allotted under subsections (a) and (b), 91 percent of the remainder shall be allotted by the Secretary to the States for allocation to service delivery areas within each State. Each State shall allocate such funds to the service delivery areas in such amounts as determined by the Secretary pursuant to paragraph (2). The remaining 9 percent shall be allotted in accordance with subsection (d).

"(2) Subject to the provisions of paragraph (3), of the amounts allotted to service delivery areas under this subsection for each fiscal year—

"(A) 50 percent shall be allotted on the basis of the relative number of economically disadvantaged youth within each service delivery area as compared to the total number of economically disadvantaged youth in all service delivery areas in all States;

"(B) 25 percent shall be allotted on the basis of the relative concentration of the economically disadvantaged youth within each service delivery area as compared to the total concentration of economically disadvantaged youth in all service delivery areas in all States; and

"(C) 25 percent shall be allotted on the basis of the relative number of unemployed individuals who reside in each service delivery area compared to the total number of unemployed individuals in all service delivery areas in all States.

"(3)(A) No service delivery area shall be allocated an amount equal to less than 90 percent, or more than 115 percent, of its allocation percentage for the preceding fiscal year for which the determination is made. If the amounts appropriated pursuant to section 3(b) of the Act are not sufficient to provide an amount equal to at least 90 percent of such allocation percentages to each such area, the amounts allocated to each area shall be ratably reduced.

"(B)(i) Except as otherwise provided in this subparagraph, the allocation percentage for a service delivery area for a fiscal year is the percentage which the service delivery area received of the total amount allocated under this part for such fiscal year to all service delivery areas in all States.

"(ii) The allocation percentage for fiscal year 1991 is the percent of the funds allocated for youth programs (as determined by the Secretary) under title II to the service delivery area during the preceding fiscal year.

"(C) Notwithstanding subparagraph (A), the total allocation for all service delivery areas within any one State for any fiscal year shall not be less than one-quarter of one percent of the total amounts available for allotment under subsection (c) for such fiscal year.

"(D) The private industry council in each service delivery area may reserve not more than 10 percent of the funds received under this part for experimental programming for groups with special needs and other hard-to-serve individuals. The Comptroller General shall conduct a study to review and assess such experimental programs and post program results and shall submit the findings to the appropriate committees of Congress before September 30, 1994.

"(4)(A) For the purposes of this section—

"(i) the term 'economically disadvantaged youth' means an individual who is age 16 through 21 and who has, or is a member of a family which has, received a total family income which, in relation to family size, was not in excess of the higher of (I) the poverty income guidelines promulgated each year by the Secretary of Health and Human Services of (II) 70 percent of the lower living standard income level;

"(ii) the term 'concentration' means the number which represents the number of economically disadvantaged youth in excess of 10 percent of the youth population in the service delivery area.

"(B) For the purposes of subparagraph (A), and to the extent practical, the Secretary shall exclude college students and members of the Armed Forces from the number of economically disadvantaged youth.

"(d)(1) Subject to the provisions of section 453(e)(5), the remainder available for allotment under this part shall be allotted to the States for the activities described in paragraph (2). The allotment of each State shall be based upon the relative amount of funds available to service delivery areas within such State under subsection (c) as compared to the total amount of funds available to all service delivery areas in all States under subsection (c).

"(2) Of the allotment available to each State for each fiscal year under paragraph (1)—

"(A) four-ninths shall be available for overall administration, management, and auditing activities relating to programs under this title and for activities under sections 121 and 122 of the Act;

"(B) two-ninths shall be available for technical assistance in developing the overall capability of the job training system within the State, including the development and training of State and local service delivery area staff, service provider staff, the development of information and exemplary program activities, and the conduct of research and other activities designed to improve the level degree, and goals of programs conducted under this Act: and

"(C) three-ninths shall be available to provide incentive grants authorized under section 106(b)(7).

"(e)(1) For fiscal years 1991 and 1992, the total of the amounts allotted to any State under subsections (c) and (d) and available to such State under subsection (b) shall not be less than 100 percent of the amount allotted to such State carry out youth programs under title II in fiscal year 1989.

"(2) The Secretary shall ratably adjust the amounts allotted under subsections (c) and (d) and available under subsection (b) to carry out the requirements of paragraph (1). In making such adjustments, the requirements of subsection (c)(3)(A) shall remain applicable.

"ELIGIBILITY FOR SERVICES

"SEC. 253. (a)(1) An individual who is in school shall be eligible to participate in the program under this part only if such individual is—

"(A) aged 16 through 21; and
"(B) economically disadvantaged or receiving a free lunch under the National School Lunch Act.

"(2) Not less than 70 percent of the in-school individuals who participate in a program under this part shall be individuals who, in addition to meeting the requirements of paragraph (1), are included in one or more of the following categories:

"(A) basic skills deficient;

"(B) educational attainment that is one or more grade levels below the grade level appropriate for the individual's age;

"(C) pregnant or parenting;

"(D) exhibiting pattern of disruptive behavior or disciplinary problems;

"(E) homeless, as defined by subsections (a) and (c) of section 103 of the Stewart B. McKinney Homeless Assistance Act;

"(F) individual with a disability;

"(G) limited English proficient;

"(H) offender; and

"(I) a category established pursuant to subsection (d).

"(3) An individual who is out of school shall be eligible to participate in the program under this part only if such individual is—

"(A) aged 16 through 21; and

"(B) economically disadvantaged.

"(4) Not less than 70 percent of the out-of-school individuals who participate in a program under this part shall be individuals who, in addition to meeting the requirements of paragraph (3), are included in one or more of the following categories:

"(A) basic skills deficient;

"(B) school dropout, subject to the conditions described in section 253(c);

"(C) pregnant or parenting;

"(D) homeless, as defined by subsections (a) and (c) of section 103 of the Stewart B. McKinney Homeless Assistance Act;

"(E) individual with a disability;

"(F) limited-English proficient;

"(G) offender; and

"(H) a category established pursuant to subsection (d).

"(5)(A) Not more than 10 percent of all participants in the programs assisted under this part in each service delivery area may be individuals who do not meet the requirements of paragraph (1)(B) or (3)(B) if such individuals are aged 16 through 21 and experience 1 or more barriers to employment. Such barriers may include, but are not limited to, the categories described in paragraph (2) or (4), or categories such as individuals who are alcoholics or addicts.

"(B) In addition to the individuals described in subparagraph (A), an individual who does not meet the requirements of paragraph (1)(B) may participate in the program assisted under this part if such individual is included in one of the categories described in paragraph (2) and is enrolled in a public school—

"(i) which is located in a poverty area;

"(ii) served by a local educational agency which is eligible for assistance under chapter 1 of title I of the Elementary and Secondary Education Act of 1965;

"(iii) in which not less than 70 percent of the students enrolled are included in the categories described in paragraph (2); and

"(iv) which conducts a program pursuant to a cooperative arrangement which meets the requirements of section 255(d).

"(C) For the purposes of clause (i) of subparagraph (B) the term 'poverty area' means an urban census tract or a nonmetropolitan county with a poverty rate of 30 percent or more as determined by the Bureau of the Census.

"(6) Not less than 50 percent of the participants in the program assisted under this part in each service delivery area shall be out-of-school individuals who meet the requirements of paragraph (3), (4) or (5).

"(b) A service delivery area conducting a program under this part may add one category of youth who face serious barriers to employment to the categories of eligible individuals specified in subsection (a)(2) and one category to the categories of eligible individuals specified in subsection (a)(4) if—

"(1) the service delivery area submits a request to the Governor identifying the additional categories of individuals and justifying the inclusion of such category;

"(2) the Governor approves the request submitted pursuant to paragraph (1) and transmits the request to the Secretary; and

"(3) the Secretary approves the request submitted pursuant to paragraph (2).

"(c) Eligible individuals aged 14 or 15, or aged 22 through 24, shall, if appropriate, and set forth in the job training plan, be eligible for youth programs under this part.

"(d) In order to participate in a program assisted under this part, an individual who is under the age of 18 and a school dropout shall—

"(1) re-enroll in and attend school;

"(2) enroll in and attend an alternative high school;

"(3) enroll in and attend an alternative course of study approved by the local educational agency and the service delivery area or private industry council;

"(4) enroll in and attend a high school equivalency program; or

"(5) enroll in and attend a community-based learning center with programs designed to result in the attainment of a GED or a high school diploma.

"(e) A service delivery area may transfer not more than 10 percent of the funds provided under this part to part A of this title for adult programs if a description of such transfer is included in the job training plan pursuant to section 104 and the Governor approves the transfer pursuant to section 105.

"PROGRAM DESIGN

"SEC. 254. (a) The program under this part shall be conducted on a year-round basis.

"(b) The program under this part shall include—

"(1) an assessment of each participant's skill levels and service needs, including such factors as basic skills, occupational skills, prior work experience, and supportive service needs, provided that a new assessment of a participant is not required where the program determines it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program, such as the JOBS program;

"(2) development of service strategies which shall identify achievement objectives, appropriate employment goals, and the appropriate sequence of services for participants taking into account the assessments conducted pursuant to paragraph (1);

"(3) a review of each participant's progress in meeting the objectives of the service strategy; and

"(4) the following services, to be available to a participant where the assessment and service strategy indicate such services are appropiate:

"(A) basic skills training;

"(B) occupational skills training;

"(C) pre-employment and work maturity skills training;

"(D) work experience combined with skills training; and

"(E) supportive services.

"(c) Subject to the provisions of subsection (d), services which may be made available to participants under this part may include, but need not be limited to—

"(1) outreach;

"(2) tutoring;

"(3) study skills training;

"(4) instruction for high school completion or certificate of high school equivalency;

"(5) services provided by alternative high schools;

"(6) mentoring;

"(7) individual and group counseling;

"(8) drug and alcohol abuse counseling and referral;

"(9) cash incentives and bonuses based on a participant's attendance and performance in the program;

"(10) compensation in the form of work experience wages;

"(11) services encouraging parental, spousal and other significant adult involvement in the participant's program;

"(12) on-the-job training;

"(13) limited internships in the private sector;

"(14) school-to-work transition services;

"(15) school-to-post secondary education transition services;

"(16) school-to-apprenticeship transition services;

"(17) training or education that is combined with meaningful and constructive community and youth service opportunities in public agencies, non-profit agencies or other appropriate agencies, institutions and organizations;

"(18) job search, job search skills training and job clubs;

"(19) needs-based payments;

"(20) career exploration; and

"(21) state of the art vocational education.

"(d)(1) In developing service strategies and designing services for the program under this part, the service delivery area and private industry council shall take into consideration exemplary program strategies and practices.

"(2) Pre-employment and work maturity skills training authorized by this part shall be accompanied by either work experience or other additional services designed to increase a participant's basic or occupational skills. The additional services may be provided, sequentially or concurrently, under other education and training programs, including the Job Corps and the JOBS program.

"(3) Work experience, job search, job search skills training, and job clubs activities authorized by this part shall be accompanied by additional services designed to increase a participant's basic education or occupational skills. The additional services may be provided, sequentially or concurrently, under other education and training programs, including the Job Corps and the JOBS program.

"(4) Needs-based payments authorized under this part shall be limited to payments necessary to participate in the program in accordance with a locally developed formula or procedure.

"(5) Counseling and supportive services authorized under this part may be provided to a participant for a period of up to one year after the participant's completion of the program.

"(6) The service strategy developed pursuant to section 254(b)(2) shall not be considered a contract.

"(e)(1) In addition to the services described under subsections (b), (c), and (d), service delivery areas may elect to use funds available under this part to conduct a summer jobs program component consistent with the following limitations:

"(A) the participating youth's service strategy indicates such summer work experience is appropriate; and

"(B) the summer work experience is accompanied by additional education or training in a year-round program.

"(2) The additional education or training provided for in subparagraph (B) be provided by—

"(A) the year-round program under this part;

"(B) the Jobs Corps;

"(C) the JOBS program;

"(D) alternative or secondary schools; or

"(E) other education and training programs.

"COOPERATIVE ARRANGEMENTS

"SEC. 255. (a) FORMAL AGREEMENTS.—In conducting a program under this part, service delivery areas shall establish cooperative agreements with the appropriate educational agencies responsible for service to participants. Such cooperative arrangements shall include—

"(1) formal agreements with education agencies that will identify—

"(A) the procedures for referring and serving in-school youth;

"(B) the methods of assessment of in-school youth to be used by the educational agency; and

"(C) procedures for notifying the program when a youth drops out of the school system;

"(2) arrangements to ensure that the program under this part supplements existing programs provided by local educational agencies to in-school youth;

"(3) arrangements to ensure that the program under this part utilizes, to the extent possible, existing services provided by educational agencies to out-of-school youth; and

"(4) arrangements to ensure that for in-school participants there is a regular exchange of information between the program and the educational agency relating to participant progress, problems and needs, including, where appropriate, interim assessment results.

"(b) COOPERATIVE ARRANGEMENTS.—In conducting the program under this part, the service delivery area shall establish appropriate cooperative arrangements with other education and training programs authorized under Federal law. Such programs shall include, where feasible, programs authorized by—

"(1) part B of title IV of this Act (the Job Corps);

"(2) parts A through D of chapter 1 of the Elementary and Secondary Education Act of 1965;

"(3) the Carl D. Perkins Vocational Educational Act;

"(4) the Education of the Handicapped Act;

"(5) the Wagner-Peyser Act;

"(6) part F of title IV of the Social Security Act (JOBS):

"(7) The Rehabilitation Act of 1973;

"(8) the Food Stamp Act;

"(9) the National Apprenticeship Act; and

"(10) the Stewart B. McKinney Homeless Assistance Act.

"(c) OTHER APPROPRIATE ARRANGEMENTS.—In addition to the cooperative arrangements required under subsections (a) and (b), service delivery areas shall establish other appropriate arrangements to enhance the provision of services under this part. Such arrangements may be established with State and local service agencies, public housing agencies, community-based organizations, business and labor organizations, volunteer groups working with at-risk youth, parents and family members, juvenile justice systems, and other training, education, employment and social service programs, including programs conducted under part A of title II.

"(d) SCHOOLWIDE PROJECTS FOR LOW-INCOME SCHOOLS.—In conducting a program serving individuals specified in section 253(a)(5)(B), the service delivery area shall establish a cooperative arrangement with the appropriate educational agency which shall, in additon to the other requirements of this section, include—

"(1) a description of how the program will supplement the educational program of the school;

"(2) identification of measurable goals to be achieved by the program and provision for assessing the extent to which such goals are met;

"(3) a description of how the program will use resources provided under this part and resources provided under other educational programs to achieve the goals identified in paragraph (2);

"(4) a description of the number of individuals to be served; and

"(5) assurances that the resources provided under this part shall be used to supplement and not supplant existing programs.".

"(b) TECHNICAL AMENDMENT.—(1) The part heading relating to part B of title II is amended to read as follows:

"PART B—YOUTH OPPORTUNITY PROGRAM"

(2) The table of contents relating to part B of title II of the Act is amended to read as follows:

"Sec. 251. Statement of purpose.
"Sec. 252. Allotment.
"Sec. 253. Eligibility for services.
"Sec. 254. Program design.
"Sec. 255. Cooperative arrangements.".

**SEC. 117. INNOVATION AND COORDINATION GRANTS.**

(a) IN GENERAL.—Title II of the act is amended by adding the following new part C at the end thereof:

"PART C—STATE INNOVATION AND COORDINATION GRANTS

"STATEMENT OF PURPOSE

"SEC. 261. It is the purpose of this part to increase the State capacity to develop comprehensive and coordinated education, training, and employment goals and strategies for at risk youth and adults, including but not limited to youth and adults at risk of not graduating from high school, chronic unemployment or welfare dependency.

"PROGRAM AUTHORIZED

"SEC. 262. (a) In General.—(1) The Secretary is authorized to make grants to States to pay the Federal share of the cost of activities described in the State innovation and coordination plan submitted pursuant to section 264.

"(2) The Secretary may award grants for a period of 1 year. Such grant may be renewed for the 2 succeeding fiscal years if the Secretary determines that the conditions of the grant have been met during the previous fiscal year.

"(b) AWARD BASIS.—Upon approval of the State innovation and coordination plan, the Secretary shall award grants on the basis of the relative amount of funds available to service delivery areas within the State under parts A and B of title II as compared to the amount of funds available to all service delivery areas in all States under parts A and B of title II.

"(c) REALLOTMENT.—In any fiscal year in which an amount of funds available under this part remains available due to a State or States not receiving approval of a State innovation and coordination plan, the amount available shall be reallotted as determined by the Secretary to States on the basis of the quality of the State innovation and coordination plan submitted pursuant to section 264.

"USE OF FUNDS

"SEC. 263. (a) IN GENERAL.—The States may use funds provided under this part to—

"(1) establish statewide policies and action strategies to address critical human resource development goals for at-risk populations;

"(2) encourage the use of cooperative and innovative arrangements between various State education, employment, welfare, and social service agencies to address the multifaceted problems of at-risk youth and adults, including but not limited to youth and adults at risk of not graduating from high school, chronic unemployment or welfare dependency.

"(3) encourage innovations in program implementation that promote the comprehensive and coordinated delivery of education, training, and employment services for at risk youth and adults, including but not limited to older individuals, and youth and adults at risk of not graduating from high school, chronic unemployment or welfare dependency; and

"(4) facilitate the development of public-private collaboration to assure private sector employment and continued learning opportunities for economically disadvantaged youth and adults, including older individuals.

"(b) AUTHORIZATION.—The Secretary is authorized to use the sums available pursuant to sections 202(b) and 252(b) to make grants to States under this part.

"(c) LIMITATION ON FEDERAL SHARE.—Of the Federal share of funds available to a State under this part in each fiscal year—

"(1) not more than 15 percent shall be expended on administrative activities.

"(2) not more than 35 percent shall be expended on—

"(A) strategic planning, coordination and other activities designed to facilitate the coordination of services provided under this Act with education and other human resource programs,

"(B) improving management information systems,

"(C) strengthening the overall infrastructure of the State employment and training programs; and

"(D) State policy development regarding long-term education and training services for youth and adults most in need of such services under this Act, and".

"(3) not less than 50 percent shall be expended on training, education, and employment services.

"STATE INNOVATION AND COORDINATION PLAN

"SEC. 264. (a) All States shall be eligible to apply for grants under this part. Each State desiring a grant under this part shall submit a State innovation and coordination plan to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary reasonably requires. Each State innovation and coordination plan shall—

"(1) describe the human resource goals to be achieved by the State and explain how such goals complement or are distinct from the goals of existing programs. Such goals may include—

"(A) reducing the school dropout rate;

"(B) raising the achievement levels of youth;

"(C) reducing illiteracy;

"(D) reducing welfare rates; and

"(E) guaranteeing a job with decent wages, through agreements with private employers, to every individual completing an education and job training program;

"(2) describe specific activities designed to achieve the goals set forth in paragraph (1),

including activities such as statewide school-based comprehensive dropout prevention activities, school-to-work services, apprenticeship services, postsecondary education transition services, or statewide integrated services to offenders;

"(3) identify measurable interim benchmarks toward achieving the goals described in paragraph (1);

"(4) describe how the activities and services for eligible participants will be provided through cooperative arrangements with State and local education and employment agencies, welfare agencies or administrative entities in service delivery areas;

"(5) describe how the activities and services to achieve the goals set forth in paragraph (1) will be coordinated with other Federal programs, such as—

"(A) the Carl D. Perkins Vocational Education Act;

"(B) the Adult Education Act;

"(C) the Wagner-Peyser Act;

"(D) the Family Support Act; and

"(E) title V of the Older American Act of 1965; and

"(6) describe the State and the local public and private resources to be committed to achieving the goals identified in paragraph (1).

"(b) JOINT SUBMISSION OF PLAN.—(1) The plan submitted pursuant to subsection (a) shall be jointly prepared and submitted to the Governor by the administrator of—

"(A) the State agency responsible for administering this Act;

"(B) the State agency responsible for administering the JOBS program; and

"(C) the State agency responsible for public education and instruction.

"(2) The plan submitted pursuant to subsection (a) shall include assurances by the administrators of each of the agencies described in paragraph (1) that such plan will result in a coordinated system of job training services.

"(3) The Governor may require additional State agencies to participate in the preparation and submission of the plan submitted pursuant to subsection (a).

"(c) PLAN SUBMITTED IN DISAGREEMENT.—If 90 days after the date designated by the Secretary for submission of the plan submitted pursuant to subsection (a), the Governor and the Administrators of the agencies described in subsection (b)(1) are not in agreement on the submission of the plan, the Governor may submit a plan pursuant to subsection (a). A plan submitted pursuant to paragraph (1) shall be accompanied by any dissenting or additional comments supplied by each of the agencies described in section 264(b)(1).

"REVIEW AND APPROVAL OF STATE INNOVATION AND COORDINATION PLAN

"SEC. 265. The Secretary shall review and approve State innovation and coordination plans for the purposes of awarding grants under this part, taking into consideration—

"(1) the extent to which goals, service strategies and accountability mechanisms will address the problems identified;

"(2) the extent of the resources to be committed from other State and local public and private sources;

"(3) evidence of a commitment to the project by the Governor, the chief executives of State education agencies, State welfare agencies, agencies administering this Act, other State agencies, and representatives of local communities, including local elected officials, private industry councils, schools, welfare agencies and community-based groups as appropriate;

"(4) specific plans for coordinating programs funded under this Act, with other education, employment and training programs, JOBS, the local employment service, and other human resource development programs; and

"(5) the amount of funds which will be used for administrative costs and the extent to which such expenditures will contribute to administrative efficiencies and service improvement.

"PAYMENTS; FEDERAL SHARE

"SEC. 266. (a) PAYMENTS.—The Secretary shall pay to each State the Federal share of the cost of the activities described in the application.

"(b) FEDERAL SHARE.—(1) The Federal share shall be 80 percent.

"(2) The portion of the costs of the program conducted pursuant to this part which is not paid by a grant received under this part shall not be paid from any Federal funds.

"PROGRAM REVIEW AND OVERSIGHT

"SEC. 267. (a) IN GENERAL.—The Secretary is authorized to monitor the progress of all recipients of State Innovation and Coordination Grants.

"(b) OVERSIGHT.—The State Job Training Coordinating Council shall be responsible for overseeing the activities of the State in the performance of activities conducted pursuant to the provisions of this part.

"REPORTS

"SEC. 268. (a) IN GENERAL.—The Secretary shall establish requirements for State reporting on the progress made in accomplishing the goals specified in each State's innovation and coordination plan.

"(b) RECORDS.—Each State receiving a grant under this part shall keep records that are sufficient to permit the preparation of reports on the progress made in achieving the goals of the State as set forth in section 264(a)(1). The State Job Training Coordinating Council shall semiannually report to the Secretary on the progress made in achieving such goals.".

"(b) TECHNICAL AMENDMENT.—The table of contents in title II of the Act is amended by adding the following after section 255:

"PART C—STATE INNOVATION AND COORDINATION GRANTS

"Sec. 261. Statement of purpose.
"Sec. 262. Program authorized.
"Sec. 263. Use of funds.
"Sec. 264. State innovation and coordination plan.
"Sec. 265. Review and approval of State innovation and coordination plan.
"Sec. 266. Payments; Federal share.
"Sec. 267. Program review and oversight.
"Sec. 268. Reports.".

**SEC. 118. EMPLOYMENT AND TRAINING ASSISTANCE FOR DISLOCATED WORKERS.**

Section 314(f) of the Act is amended by—

(1) inserting "(1)" after the subsection designation; and

(2) inserting the following new paragraph after paragraph (1):

"(2) An eligible dislocated worker participating in training (except for on-the-job training) pursuant to this title shall be deemed to be in training with the approval of the State agency for purposes of section 3304(a)(8) of the Internal Revenue Code of 1986.".

**SEC. 120. NATIVE AMERICAN PROGRAMS.**

(a) IN GENERAL.—Section 401 of the Act is amended—

(1) in subsection (a), by inserting "American Samoan," after "Alaskan Native,";

(2) in subsection (b)(2), by inserting "and to American Samoans residing in the United States" after "descent";

(3) in subsection (c)(1)(B)—

(A) by inserting "and American Samoans residing in the United States" after "natives"; and

(B) by inserting "and State agencies" after "organizations";

(4) in subsection (e)—

(A) by inserting "and American Samoan" after "Native American"; and

(B) by adding at the end thereof the following new sentence: "Such procedures and machinery shall include—

"(1) the designation by the Secretary of a single organizational unit which shall have the principal responsibility for the development, coordination, and oversight of all policies (except audit, procurement and debt collection policies) under which the Secretary regulates or influences the operation of Native American programs under this section; and

"(2) a special effort to recruit Indians, Native Alaskans, American Samoans and Native Hawaiians for employment in the organizational unit identified in paragraph (1)"; and

(5) in subsection (h) by—

(A) inserting "and American Samoans" after "Native Americans"; and

(B) inserting "and American Samoan" after "Native American".

(b) ADVISORY COUNCIL.—Section 401(h) (as amended in subsection (a)) of the Act is further amended by—

(1) striking "representatives of Indians and other Native Americans" and inserting in lieu thereof the following: "the Advisory Council on Native American Job Training Programs"; and

(2) inserting at the end thereof the following new paragraph:

"(3)(A) The Secretary shall establish an Advisory Council on Native American Job Training Programs (hereafter in this section referred to as the 'Council') which shall consist of not less than 15 Indians, Native Alaskans, American Samoans, or Native Hawaiians appointed by the Secretary from among individuals nominated by Indian tribes or Indian, Native Alaskan, American Samoan, or Native Hawaiian organizations. The Council's membership shall represent diverse geographic areas and include representatives of tribal governments and of nonreservation Native American organizations.

"(B) The Council shall be chaired by an Indian, Native Alaskan, or Native Hawaiian Council member elected by a majority of the Council's membership and shall meet not less than twice each Program Year. Each Council member may serve for a term of 2 years, and may be reappointed.

"(C) The Council shall—

"(i) solicit the views of a wide variety of tribes and Native American and American Samoan groups, including those operating employment and training programs funded under this section, on issues affecting the operation and administration of such programs;

"(ii) advise the Secretary with respect to all matters concerning the implementation of programs under this section and other programs providing services to Native American youth and adults under this Act;

"(iii) advise the Secretary in the design of all aspects of the system of performance standards developed under this section;

"(iv) advise the Secretary with respect to services obtained by the Department through contracts or arrangements with non-Federal agencies or entities which involve the provision of technical assistance to, or evaluation of, the program authorized by this section;

"(v) assess the effectiveness of Native American job training programs and make recommendations with respect to the improvement of such programs;

"(vi) advise the Secretary with regard to the recruitment of, identification of, and selection criteria for, candidates for the position of chief of the organizational unit described in subsection (e)(1) whenever a vacancy in such position occurs; and

"(vii) submit a report to the Congress no later than January 1 of each year on the progress of Native American job training programs and recommendations for improving their effectiveness.

"(D) From amounts appropriated to carry out the provisions of this section, the Secretary shall make available to the Council such sums as may be necessary to carry out the functions of the Council.".

(c) RESERVATION.—Section 401(j) is amended to read as follows:

"(j)(1) For the purposes of carrying out this section, the Secretary shall reserve, from funds available for this title (other than part B) for any fiscal year, an amount not less than 3.1 percent of the total amount of funds appropriated to carry out the provisions of parts A and B of title II of this Act for such fiscal year.

"(2) Of the amounts reserved under paragraph (1), 18 percent shall be provided to section 401 entities which were eligible for direct funding under part B of title II (the Summer Youth Employment and Training Programs) immediately prior to the enactment of this Act. Such entities shall use such funds to operate special programs for economically disadvantaged Native American youth between the ages of 14 and 21.".

**SEC. 120. MIGRANT AND SEASONAL FARMWORKER PROGRAMS.**

Section 402(f) of the Act is amended to read as follows:

"(f) For the purposes of carrying out the provisions of this section, the Secretary shall reserve, from funds available for this title (other than part B) for any fiscal year, an amount not less than 2.76 percent of the total amount of funds appropriated to carry out the provisions of parts A and B of title II of this Act for such fiscal year.".

**SEC. 121. JOB CORPS.**

Section 427(a)(2) of the Act is amended—

(1) by striking "10 percent" and inserting in lieu thereof "20 percent"; and

(2) by striking the period at the end thereof and inserting in lieu thereof the following: ", provided that the Secretary shall not reduce the number of residential participants in Job Corps programs under this part during any program year below the number of residential participants during program year 1991, in order to increase the number of individuals who are nonresidential participants in the Job Corps.".

**SEC. 122. NATIONAL ACTIVITIES.**

(a) IN GENERAL.—Part D of title IV of the Act is amended to read as follows:

"PART D—NATIONAL ACTIVITIES

"NATIONAL PARTNERSHIP AND SPECIAL TRAINING PROGRAMS

"SEC. 451.(a) STATEMENT OF PURPOSE.—It is the purpose of this section to—

"(1) improve access to employment and training opportunities for those with special needs,

"(2) help alleviate skill shortages and enhance the competitiveness of the labor force,

"(3) meet special training needs that are best addressed on a multistate or industry-wide basis, and

"(4) encourage the participation and support of all segments of society to further the goals of this Act.

"(b) PROGRAM AUTHORIZED.—The Secretary is authorized to establish a system of special grant programs that are most appropriately administered at the national level.

"(c) PROGRAMS.—Programs that are most appropriately administered at the national level include—

"(1) partnership programs with national organizations with special expertise in developing, organizing, and administering employment and training programs at the national, State, and local level, such as industry and labor associations, public interest groups, and community-based organizations representative of groups that encounter special difficulties in the labor market, and other organizations with special knowledge or capabilities in education and training;

"(2) programs that—

"(A) address industry-wide skill shortages,

"(B) meet training needs that are best addressed on a multistate basis, and

"(C) further the goals of increasing the competitiveness of the United States labor force; and

"(3) programs which require technical expertise available at the national level to serve specialized needs of particular client groups, including at-risk youth, offenders, individuals of limited English language proficiency, individuals with disabilities, women, immigrants, single parents, substance abusers, displaced homemakers, youth, older workers, veterans, individuals who lack education credentials, public assistance recipients, and other individuals whom the Secretary determines require special assistance.

"RESEARCH, DEMONSTRATION, AND EVALUATION

"SEC. 452. (a) IN GENERAL.—To assist the Nation in expanding work opportunities and ensuring access to those opportunities for all who desire it, the Secretary shall establish a comprehensive program of training and employment research, utilizing the methods, techniques, and knowledge of the behavioral and social sciences and such other methods, techniques, and knowledge as will aid in the solution of the Nation's employment and training problems. The program under this section may include studies concerning—

"(1) the development or improvement of Federal, State, local, and privately supported employment and training programs;

"(2) labor market processes and outcomes, including improving workplace literacy;

"(3) policies and programs to reduce unemployment and the relationships thereof with price stability and other national goals;

"(4) productivity of labor;

"(5) improved means of using projections of labor supply and demand, including occupational and skill requirements and areas of labor shortages at the national and subnational levels;

"(6) methods of improving the wages and employment opportunities of low-skilled disadvantaged and dislocated workers, and workers with obsolete skills;

"(7) addressing the needs of at-risk populations, such as youth, homeless individuals, and other dependent populations, older workers, and other groups with multiple barriers to employment;

"(8) developing information on immigration, international trade and competition, technological change and labor shortages; and

"(9) easing the transition from school to work, from transfer payment receipt to self-sufficiency, from one job to another, and from work to retirement.

"(b) PILOTS AND DEMONSTRATIONS.—(1) The Secretary shall establish a program of pilot and demonstration programs, through grants or contracts, for the purpose of developing and improving techniques and demonstrating the effectiveness of specialized methods in addressing employment and training problems. These programs may include projects in such areas as—

"(A) school-to-work transition,

"(B) new methods of imparting literacy skills and basic education,

"(C) new training techniques (including projects undertaken with the private sector),

"(D) methods to eliminate artificial barriers to employment,

"(E) approaches that foster participation of groups which encounter special problems in the labor market (such as displaced homemakers, teen parents, welfare recipients, and older individuals),

"(F) processes that demonstrate effective methods for alleviating the adverse effects of dislocation and plant closings on workers and their communities, and

"(G) cooperative ventures among business, industry, labor, trade associations or national organizations to develop new and cost-effective approaches to improving workforce literacy.

"(2) Demonstration projects shall include a formal, rigorous evaluation component.

"(3) No pilot project under this subsection shall be financially assisted under this Act for a period of more than 3 years.

"(c) EVALUATION.—(1) The Secretary shall provide for the continuing evaluation of programs conducted under this Act, including the cost effectiveness of the program in achieving the purposes of this Act. The Secretary may also conduct evaluations of other federally funded employment-related activities including programs administered under—

"(A) the Wagner-Peyser Act,

"(B) the National Apprenticeship Act,

"(C) the Older Americans Act,

"(D) chapter 2 of title II of the Trade Act of 1974, and

"(E) the Unemployment Insurance program under the Social Security Act.

Evaluations conducted pursuant to this paragraph shall utilize sound statistical methods and techniques of the behavioral and social sciences, including random assignment methodologies when feasible. Such studies may include cost-benefit analysis of programs, their impact on communities and participants, the extent to which programs meet the needs of various demographic groups, and the effectiveness of the delivery systems used by various programs. The Secretary shall evaluate the effectiveness of programs authorized under this Act with respect to the statutory goals, the performance standards established by the Secretary, and the extent to which such programs enhance the employment and earnings of participants, reduce income support costs, and improve the employment competencies of participants in comparison to comparable persons who did not participate in such programs, and to the extent feasible, increase total employment over what total employment would have been in the absence of such programs.

"(2) The Secretary shall evaluate the impact of title II programs as amended by the Job Training and Basic Skills Act of 1991 on participant employment, earnings, and welfare dependency in multiple sites using the random assignment of individuals to groups receiving services under programs authorized under the Job Training and Basic Skills Act of 1989 or to groups not receiving such services.

"(d) ALLOCATION STUDY.—(1) The Secretary shall, directly or by contract, provide for a study of the effectiveness of the allocation formulas set forth in sections 202 and 252 in equitably allocating funds under title II among service delivery areas.

"(2) The study conducted pursuant to paragraph (1) shall include—

"(A) an examination of alternative factors, such as public assistance data, which could be used as a basis for allocating funds under title II; and

"(B) a review of methods that could be used to update more frequently the data used in determining whether an individual is economically disadvantaged.

"(3) The Secretary shall transmit the findings and recommendations of the study conducted pursuant to paragraph (1) to the Congress by October 1, 1994.

"TRAINING AND TECHNICAL ASSISTANCE

"SEC. 453. (a) IN GENERAL.—The Secretary shall develop and publish a strategic, multiyear national plan for the development and expansion of the capacity of the employment and training system to achieve the goals and objectives provided for under this Act. Such plan shall take into consideration projected investments by the Federal Government, States, and service delivery areas of funds provided under this Act for research, demonstration, pilot projects, evaluation, technical assistance, and training.

"(b) TRAINING.—The Secretary shall provide, directly or through grants, contracts, or other arrangements, appropriate preservice and inservice training for specialized, supportive, supervisory, or other personnel including job skills teachers. The Secretary shall provide appropriate technical assistance, including activities related to the development and attainment of performance goals, to programs assisted under this Act, and to other employment related programs administered by the Department of Labor, as the Secretary deems appropriate. Such training and technical assistance may utilize the training and technical assistance capabilities existing at the State and service delivery area level.

"(c) TECHNICAL ASSISTANCE.—The Secretary is authorized to provide staff training and technical assistance services to States or service delivery areas in order to improve their staff training and technical assistance capabilities.

"(d) DISSEMINATION.—The Secretary shall disseminate materials and information gained from exemplary program experience and from research and demonstration activities which may be of use in the innovation or improvement of other programs conducted pursuant to this Act or to related programs conducted under other employment related legislation administered by the Department of Labor.

"(e) TRAINING INSTITUTES.—(1) The Secretary shall, before July 1, 1992, establish a network of regional training institutes, in order to strengthen the caliber of services provided through the various Federal, State, and local employment and training systems. To initiate and maintain the network, the Secretary shall, on a competitive basis, award grants or contracts to colleges and universities, private nonprofit organizations, community-based organizations or other organizations with specialized employment and training knowledge and expertise to establish not more than 5 regional training institutes. Each such regional training institute shall—

"(A) provide appropriate training, technical assistance, professional development, and other activities which will—

"(i) enhance the skills, knowledge, and expertise, of the personnel who staff employment and training delivery systems, including service providers, and

"(ii) improve the quality of services provided through this Act and other Federal employment training programs;

"(B) prepare and disseminate training curricula and materials for employment and training professionals and support staff which focus on enhancing staff competencies and professionalism;

"(C) disseminate innovative and successful models, materials, methods, and program information to foster professional growth among managers, service delivery providers, and administrators involved in the delivery of employment and training services;

"(D) act as a clearinghouse to regularly identify, develop, and disseminate innovative materials which enhance the knowledge and quality of performance of employment and training personnel;

"(E) facilitate effective communications and coordination among employment and training personnel;

"(F) establish an institute advisory committee which shall be broadly representative of the employment and training systems and which shall assist in—

"(i) establishing institute priorities,

"(ii) evaluating institute performance, and

"(iii) enhancing the effectiveness and efficiency of institute operations.

"(2) The regional training institutes established pursuant to paragraph (1) may charge appropriate tuition or fees to offset the costs of various institute training, materials acquisition, or other training-related costs.

"(3) The Secretary shall provide guidance, technical assistance, and direction to the regional training institute network to ensure that regional training institutes respond to employment and training staff needs, furnish high quality training and materials, meet program objectives without duplication, and encourage the use of the latest technologies for training and program management.

"(4) The Secretary shall consult with the Secretary of Education, as needed, to coordinate the activities of the regional network of training institutes with other relevant institutes, centers, laboratories, or clearinghouses.

"(5) The Secretary shall reserve 5 percent of the amounts allotted to the States under sections 202(d)(2)(B) and 252(d)(2)(B) of this Act to carry out the provisions of this subsection.".

(B) TECHNICAL AMENDMENT.—The table of contents relating to part D of title IV of the Act is amended to read as follows:

"PART D—NATIONAL ACTIVITIES

"Sec. 451. National partnership and special training programs.
"Sec. 452. Research, demonstration, and evaluation.
"Sec. 453. Training and technical assistance.".

**SEC. 123. COOPERATIVE LABOR MARKET INFORMATION PROGRAM.**

Section 462 of the Act is amended by inserting at the end thereof the following new subsection:

"(g)(1) The Secretary is authorized to engage in research, demonstration, or other activities, including those which might be carried out by States, designed to determine the feasibility of various methods of organizing and making accessible nationwide, information on the quarterly earnings for all individuals for whom such information is collected by the States.

"(2) The Secretary shall report to Congress concerning the costs and benefits of establishing and maintaining a national longitudinal data base utilizing unemployment insurance wage records. Such report shall also address the feasibility of establishing appropriate safeguards for maintaining the confidentiality of information and privacy of individuals.".

**SEC. 124. NATIONAL OCCUPATIONAL INFORMATION COORDINATING COMMITTEE.**

Section 464(a)(1) of the Act is amended by striking "not more than $5,000,000" and inserting "such sums as necessary.".

**SEC. 125. REPLICATION OF SUCCESSFUL PROGRAMS.**

(a) IN GENERAL.—Title IV of the Act is amended by adding at the end thereof the following new part:

"PART H—REPLICATION OF SUCCESSFUL PROGRAMS

"REPLICATION OF SUCCESSFUL PROGRAMS

"SEC. 485. (a) REPLICATION PROGRAM AUTHORIZED.—The Secretary shall, in consultation with the expert review panel appointed pursuant to subsection (b), make grants to national or regional public or private nonprofit organizations which meet the requirements of this section for the provision of technical assistance, and to States and service delivery areas for costs associated with the development and operation of model programs approved by the Secretary in accordance with the provisions of this section.

"(b) REVIEW PANEL.—(1) The Secretary shall appoint a review panel of recognized experts in the operation and evaluation of employment and training programs for economically disadvantaged youth and adults, and dislocated workers. Such panel shall select and designate model programs pursuant to the provisions of this section. The review panel shall meet at least once each year to carry out the responsibilities described in this section. No member of such panel shall have a direct financial interest in or affiliation with a potential recipient of funds under the program authorized by this section.

"(2) The review panel shall select and designate model programs and make recommendations to the Secretary regarding those programs the review panel deems likely to be successful in improving the employment prospects of economically disadvantaged youth and adults, and dislocated workers, and which are replicable on a large scale. In selecting such programs the review panel shall consider—

"(A) the size and scope of the program;

"(B) the length of time the program has been operating;

"(C) the nature and reliability of measurable outcomes for the program;

"(D) the capacity of the sponsoring national or regional organization to provide the technical assistance necessary for States and local communities to replicate the program; and

"(E) the likelihood the program will be successful in diverse economic, geographic, and cultural environments.

"(c) SPECIAL CONSIDERATION.—The review panel shall give special consideration to programs that have the demonstrated ability to integrate or coordinate services through collaborative efforts with other service providers in the areas of basic skills instruction, occupational, and pre-employment and work maturity training programs.

"(d) CRITERIA FOR MODEL PROGRAMS.—The review panel shall consider any program for designation as a model program if such program—

"(1) is designed to improve the employment prospects of economically disadvan-

taged youth and adults, and dislocated workers;

"(2) is sponsored or operated by a national or regional public or private nonprofit organization with the capacity to provide the technical assistance necessary to enable States and local communities to implement the program;

"(3) has demonstrated reasonable evidence of success, as reflected in measurable outcomes related to stated program goals and objectives; and

"(4) has operated on a scale sufficient to demonstrate that the program has the potential to be replicated across a wide range of sites and successfully serve large numbers of economically disadvantaged youth and adults, and dislocated workers.

"(e) APPLICATIONS.—Each public or private nonprofit organization, State, or service delivery area desiring to receive a grant under this part shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Each such application shall—

"(1) describe the activities and services for which assistance is sought; and

"(2) contain such information and assurances as the Secretary may require to ensure compliance with the provisions of this part.

"(f) GRANT LIMITATIONS.—(1) In any 3-year period the Secretary shall not approve grants for the same replication activities in more than 10 States or communities. During such 3-year period, the results of such limited replication efforts shall be carefully evaluated and examined by the review panel, which shall submit recommendations to the Secretary regarding the advisability of replicating the model program in more than 10 States or communities or for longer than 3 years. On the basis of such recommendations, the Secretary shall have authority to replicate such programs in more than 10 communities or for longer than 3 years.

"(2) The Secretary may, upon recommendation of the review panel, waive the limitation set forth in paragraph (1) if immediate replication efforts on a larger scale is warranted by extensive evaluation of the program prior to its designation as a model program pursuant to the provisions of this paragraph.

"(g) REPORTS.—The review panel shall prepare a report on the model programs the review panel has selected for replication, including a justification of such selections. Such report shall be submitted to the appropriate committees of Congress within one year of the date of enactment of this Act and each year thereafter.".

(b) TECHNICAL AMENDMENT.—The table of contents in title IV of the Act is amended by adding the following after section 481:

"PART H—REPLICATION OF SUCCESSFUL PROGRAMS

"Sec. 485. Replication of successful programs.".

**SEC. 126. FAIR CHANCE YOUTH OPPORTUNITIES UNLIMITED PROGRAM.**

(a) IN GENERAL.—Title IV of the Act is amended by adding at the end thereof the following new part:

"PART I—FAIR CHANCE YOUTH OPPORTUNITIES UNLIMITED PROGRAM

"STATEMENT OF PURPOSE

"SEC. 491. The purposes of the Fair Chance Youth Opportunities Unlimited program include—

"(1) enabling communities with high concentrations of poverty to establish and meet goals for improving the opportunities available to youth within the community; and

"(2) facilitating the coordination of comprehensive services to serve youth in such communities.

"PROGRAM AUTHORIZED

"SEC. 492. (a) PROGRAM ESTABLISHED.—The Secretary is authorized to establish a national program of Youth Opportunities Unlimited grants to pay the Federal share of providing comprehensive services to youth living in high poverty areas in the Nation's cities and rural areas.

"(b) AWARDS.—(1) The Secretary may only award grants under this part to the service delivery area (on behalf of the participating community) in which the target area is located, or to the grantee designated under section 401 if the target area is located on an Indian reservation or Alaskan native village.

"(2) The Secretary may award not more than 25 grants in the first fiscal year that the program assisted under this part is authorized, and may award not more than a total of 40 grants over the first 5 fiscal years that the program assisted under this part is authorized.

"(3) The Secretary shall award at least 1, but not more than 3, grants over the first 5 fiscal years that the program assisted under this part is authorized among grantees designated under section 401 representing Indian reservations and Alaskan native villages.

"(c) GRANT TERM.—(1) Grants awarded under this part shall be for a 1-year period and are renewable for each of the 2 succeeding fiscal years if the Secretary determines the grant recipient complied with conditions of the grant during the previous fiscal year.

"(2) The Secretary may extend the renewal period set forth in paragraph (1) for an additional 2 fiscal years upon reapplication.

"(d) AWARD CRITERIA.—In awarding grants under this part, the Secretary shall consider the quality of the proposed project, the goals to be achieved, the likelihood of the project's successful implementation, and the extent of community support. The Secretary shall give priority to participating communities with the highest rates of poverty.

"DEFINITIONS

"SEC. 493. For the purposes of this part—

"(1) The term 'participating community' means the city in a Metropolitan Statistical Area, the contiguous nonmetropolitan counties in a rural area, or an Indian reservation or Alaskan native village, that includes the target area for the Fair chance Youth Opportunities Unlimited Program.

"(2) The term 'poverty area' means an urban census tract, a nonmetropolitan county, an Indian reservation, or an Alaskan native village, with a poverty rate of 30 percent or more as determined by the Bureau of the Census.

"(3) The term 'target area' means a poverty area or set of contiguous poverty areas that will be the focus of the program in each participating community.

"APPLICATION

"SEC. 494. (a) ELIGIBILITY.—Participating communities which have the highest concentrations of povery, as determined by the Secretary based on the latest Census estimates, shall be eligible to apply for a Youth Opportunities Unlimited grant.

"(b) APPLICATION.—Each participating community desiring a grant under this part shall, through the individuals set for in subsection (c), submit an application to the Secretary at such time in such manner and accompanied by such information as the Secretary may reasonably require. Each such application shall—

"(1) include a comprehensive plan for the Fair Chance Youth Opportunities Unlimited initiative designed to achieve identifiable goals for youth in the target area;

"(2) set forth measurable program goals which may include increasing—

"(A) the proportion of youths completing high school,

"(B) the proportion of youths entering into community colleges or other advanced training programs, or

"(C) the proportion of youths placed in jobs;

"(3) include supporting goals for the target area such as increasing security and safety, or reducing the number of drug-related arrests;

"(4) provide assurances that the conditions set forth in section 495 will be met;

"(5) ensure that all youth in the target areas have access to a coordinated and comprehensive range of education and training opportunities which serve the broadest range of youth interests and needs and simultaneously mobilizes the diverse range of education and training providers in the participating community;

"(6) demonstrate how the participating community will make use of the resources, expertise, and commitment of institutions of higher education, educational agencies, and vocational and technical schools and institutes;

"(7) demonstrate how the participating community will make use of the resources, expertise, and commitment of such programs and service providers as—

"(A) community-based organizations providing vocational skills, literacy skills, remedial education, and general equivalency preparation, including those serving youth with limited English proficiency;

"(B) youth conservation and human service corps;

"(C) Job Corps centers;

"(D) apprenticeship programs; and

"(E) other projects and programs funded under this Act;

"(8) include an estimate of the expected number of youth in the target area to be served;

"(9) include a description of the resources available in the participating community from private, local government, State and Federal sources which will be used to achieve the goals of the program;

"(10) include an estimate of funds required to ensure access to appropriate education, training, and support services for all youth in the target area who seek such opportunities; and

"(11) provide evidence of support for accomplishing the stated goals of the participating community from—

"(A) local elected officials,

"(B) the local school board,

"(C) applicable private industry council,

"(D) local community leaders,

"(E) business,

"(F) labor organizations, and

"(G) other appropriate organizations.

"(c) APPLICATION LIMITATION.—The application for funds for a participating community may only be submitted to the Secretary by—

"(1) the mayor of a city in a Metropolitan Statistical Area, after the Governor of the State in which such city is located has had an opportunity to comment on the application;

"(2) the Governor of the State in which the contiguous nonmetropolitan counties in a rural area are located; or

"(3) the grantee designated under section 401 for an Indian reservation or Alaskan native village.

"GRANT AGREEMENT

"SEC. 495. Each service delivery area (on behalf of the participating community) receiving a grant under this part shall enter into an agreement with the Secretary. Each such agreement shall—

"(1) designate a target area that will be the focus of the demonstration project which shall have a population of not more than 25,000;

"(2) contain assurances that funds provided under this part will be used to support education, training, and supportive activities selected from a set of youth program models designated by the Secretary or from alternative models described in the application and approved by the Secretary, such as—

"(A) nonresidential learning centers,

"(B) alternative schools,

"(C) combined summer remediation, work experience and work readiness training, and school-to-work/apprenticeship/post-secondary education programs,

"(D) teen parent programs,

"(E) special programs run by community colleges,

"(F) youth centers,

"(G) initiatives aimed at increasing rural student enrollment in post-secondary institutions,

"(H) public-private collaborations to assure private sector employment and continued learning opportunities for youth; and

"(I) initiatives that combine community and youth service opportunities with education and training activities.

"(3) provide that only youth who are aged 14 through 21 and reside in the target area shall be eligible to participate in the program;

"(4) contain assurances that the local educational agency and any other educational agency which operates secondary schools in the target area shall provide such activities and resources as are necessary to achieve the educational goals specified in the application;

"(5) contain assurances that the participating community will provide such activities and local resources as are necessary to achieve the goals specified in the application;

"(6) provide that the participating community will carry out special efforts to establish coordination with Federal, State, or local programs that serve the target population; and

"(7) provide assurances that funds provided under this part will be used only to pay the Federal share of the costs of programs and services not otherwise available in the target area and will supplement, and not supplant, funding from other local, State, and Federal sources available to youth in the target area.

"PAYMENTS; FEDERAL SHARE

"SEC. 496. (a) PAYMENTS.—The Secretary shall pay to each participating community the Federal share of the costs of the activities described in the application.

"(b) FEDERAL SHARE.—The Federal share for each fiscal year a participating community receives assistance under this Act shall be 50 percent.

"(c) LIMITATION.—Each participating community may provide not more than 25 percent of its share from Federal sources other than funds received pursuant to this part.

"REPORTING

"SEC. 497. The Secretary is authorized to establish such reporting procedures as necessary to carry out the purposes of this part.

"FEDERAL RESPONSIBILITIES

"SEC. 498. (a) IN GENERAL.—The Secretary shall provide assistance to participating communities in the implementation of this project in participating communities. The Secretary may reserve not more than 5 percent of the operations and coordination of programs funded under this part. Such report should summarize findings concerning—

"(1) the extent to which current programs are sufficient in number, variety, and quality to meet demand; and

"(2) the feasibility of extending access to comprehensive education, training and support services and programs required under this part to all areas of the nation, including possible approaches to the incremental extension of such access over time.".

(b) TECHNICAL AMENDMENT.—The table of contents of the Act is amended by adding the following after section 485:

"PART I—FAIR CHANCE YOUTH OPPORTUNITIES UNLIMITED PROGRAM

"Sec. 491. Statement of purpose.
"Sec. 492. Program authorized.
"Sec. 493. Definitions.
"Sec. 494. Application.
"Sec. 495. Grant agreement.
"Sec. 496. Payments; Federal share.
"Sec. 497. Reporting.
"Sec. 498. Federal responsibilities.".

## TITLE II—STATE HUMAN RESOURCE COUNCIL

### SEC. 201. ESTABLISHMENT OF STATE HUMAN RESOURCE INVESTMENT COUNCILS.

(a) COUNCIL ESTABLISHED.—Each State receiving assistance under an applicable program shall establish a State human resource investment council (hereafter in this title referred to as the "State council") to—

(1) review the provisions of services and the use of funds and resources under applicable programs and advise the Governor on methods of coordinating such provision of services and use of funds and resources consistent with the provisions of the applicable programs;

(2) advise the Governor on the development and implementation of State and local standards and measures relating to applicable programs and coordination of such standards and measures; and

(3) work cooperatively with the directors of the designated State units administering the State vocational rehabilitation programs and the directors of the special education units of the State education agencies to enhance employment and vocational education and training opportunities under applicable programs for persons with disabilities.

(b) COMPOSITION.—Each State council established as required by subsection (a) shall consist of the following members appointed by the Governor—

(1) not less than 30 percent shall be appointed from representatives of business and industry (including agriculture, where appropriate), including individuals who are representatives of business and industry on private industry councils within the State established under section 102 of the Job Training Partnership Act;

(2) not less than 30 percent shall be appointed from representatives of organized labor and representatives of community-based organizations in the State;

(3) not less than 20 percent shall consist of—

(A) the chief administrative officer from each of the State agencies primarily responsible for administration of an applicable program;

(B) other members appointed from representatives of the State legislature and State agencies and organizations, such as the State educational agency, the State vocational education board, the State board of education (if not otherwise represented), the State public assistance agency, the State employment security agency, the special education unit of the State education agency, the State occupational information coordinating committee, State postsecondary institutions, the State economic development agency, the State agency on aging, the State veteran's affairs agency (or its equivalent), State career guidance and counseling organizations, and any other agencies the Governor determines to have a direct interest in the utilization of human resources within the State; and

(C) the chief administrative officer(s) of the designated State unit(s) which administer(s) the State vocational rehabilitation program as authorized under title I of the Rehabilitation Act; and

(4) not more than 20 percent shall be appointed from—

(A) representatives of units of general local government or consortia of such units, appointed from nominations made by the chief elected officials of such units or consortia;

(B) representatives of local educational agencies and postsecondary institutions, which appointments shall be equitably distributed between such agencies and such institutions and shall be made from nominations made by local educational agencies and postsecondary institutions, respectively;

(C) representatives of local welfare agencies; and

(D) individuals who have special knowledge and qualifications with respect to the special education and career development needs of individuals who are members of special populations, women, and minorities, including one individual who is a representative of special education.

(c) BUDGET.—Each State council shall prepare a budget for itself and submit the budget to the Governor for approval.

(d) SERVICES.—Each State council may obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out the State Council's functions under this Act and under any applicable program.

(e) CERTIFICATION.—Each State receiving financial assistance under an applicable program shall certify to the Secretary of Labor the establishment and membership of a State council at least 90 days before the beginning of each period of 2 program years for which a job training plan is submitted under the Job Training Act.

### SEC. 202. DEFINITION.

For purposes of this title the term "applicable program" means any program under any of the following provisions of law:

(1) The Adult Education Act.

(2) The Carl D. Perkins Vocational Education Act.

(3) The Job Training Partnership Act.

(4) The Wagner-Peyser Act.

(5) Subtitle F of title IV of the Social Security Act (JOBS), to the extent provided under section 483 of such Act.

### SEC. 203. DUTIES OF STATE COUNCIL WITH RESPECT TO APPLICABLE PROGRAMS.

(a) DUTIES UNDER THE JOB TRAINING PARTNERSHIP ACT.—Section 122 of the Act is amended—

(1) in the section heading by striking "STATE JOB TRAINING COORDINATING COUNCIL" and inserting in lieu thereof "STATE HUMAN RESOURCE INVESTMENT COUNCIL";

(2) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

"(1) Any State which desires to receive financial assistance under this Act shall es-

tablish a State human resource investment council as required by section 201(a) of the Job Training and Basic Skills Act of 1989 and shall require such council to act as a State job training coordinating council. Funding for the duties of the council under this Act shall be provided pursuant to sections 202(d)(2)(A) and 252(d)(2)(A).";

(B) by striking paragraphs (2), (3), and (4) and redesignating paragraphs (5), (6), and (7) as paragraphs (2), (3), and (4), respectively;

(C) in paragraph (2) (as redesignated by paragraph (2) of this subsection), by striking "State council" and inserting "State human resource investment council";

(D) in paragraph (3) (as redesignated by paragraph (2) of this subsection), by striking "State council" and inserting "State human resource investment council, in carrying out its duties under this Act,"; and

(E) in paragraph (4) (as redesignated by paragraph (2) of this subsection), by striking "State council" and inserting "State human resource investment council relative to carrying out its duties under this Act".

(b) DUTIES UNDER THE WAGNER-PEYSER ACT.—The Wagner-Peyser Act (29 U.S.C. 49) is amended—

(1) by redesignating section 15 as section 16; and

(2) by inserting after section 14 the following new section:

"SEC. 15. The State human resource investment council established under section 201(a) of the Job Training and Basic Skills Act of 1989 shall review the provision of services and the use of funds and resources under this Act and advise the Governor on methods of coordinating such provision of services and use of funds and resources with the provision of services and the use of funds and resources under—

"(1) the Adult Education Act;

"(2) the Carl D. Perkins Vocational Education Act;

"(3) the Job Training Partnership Act; and

"(4) part F of title IV of the Social Security Act (JOBS), to the extent provided under section 483 of such Act.".

(3) in subsection (b) of section 8 by striking "State job training coordinating council" and inserting "State human resource investment council"; and

(4) in subsection (a) of section 11 by striking "State job training coordinating council" and inserting "State human resource investment council".

**SEC 204. EFFECTIVE DATE.**

The amendments made by this title shall take effect on July 1, 1992.

**SEC. 205. CONFORMING TECHNICAL AMENDMENTS.**

(a) CONFORMING AMENDMENTS.—The Job Training Partnership Act is amended—

(1) in section 122(b)(2) by striking "section 202(a)" and inserting "sections 202(c) and 252(c)";

(2) in section 123(a) (as redesignated in section 112(b)) by striking "section 204(b)(4)" and inserting "sections 202(d)(2)(A) and 252(d)(2)(A)";

(3) in section 141(k) by striking "section 205(d)(3)(B)" and insert "part B of title II";

(4) in section 161(b)(2) by striking "through 455" and inserting "and 453";

(5) in section 433(c)(1) by striking "455" and inserting "453";

(6) in section 463(a)(3) by striking "125" and inserting "123";

(7) in section 464(a)(3) by striking "125" and inserting "123";

(8) in section 481(a) by striking "203(a)(1)" and inserting "203";

(9) by striking "State job training coordinating council" each place such term appears and inserting "State human resource investment council"; and

(10) in the table of contents by striking the item relating to section 122 and inserting "State human resource investment council."

(b) REPEALERS.—Sections 161(c) and 181 of the Job Training Partnership Act are repealed.

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## MACK AMENDMENT NO. 996

(Ordered to lie on the table.)

Mr. MACK submitted an amendment intended to be proposed by him to the bill S. 1554, supra, as follows:

At the end of the bill, add the following new section:

**SEC. . SENSE OF THE SENATE REGARDING CAPITAL GAINS.**

It is the sense of the Senate that—

(1) the individual and corporate maximum rates of tax on long-term capital gains should be reduced to 15 percent;

(2) the basis of stock in a corporation and tangible property which is a capital asset used in a trade or business held for more than 1 year should be indexed for inflation;

(3) the limitation on capital losses of individuals should be indexed for inflation;

(4) the House of Representatives should immediately adopt and send to the Senate for consideration legislation regarding capital gains as described in this section.

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## HATCH AMENDMENTS NOS. 997 THROUGH 999

(Ordered to lie on the table.)

Mr. HATCH submitted three amendments intended to be proposed by him to the bill S. 1554, supra, as follows: Intended to be proposed by Mr. Hatch

AMENDMENT NO. 997

At the appropriate place, insert the following new section:

**SEC. . CONTRIBUTIONS OF DEPRECIABLE BUSINESS PROPERTY.**

(a) IN GENERAL.—Subsection (e) of section 170 of the Internal Revenue Code of 1986 (relating to contributions of ordinary income and capital gain property) is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF DEPRECIABLE BUSINESS PROPERTY.—

"(A) QUALIFIED CONTRIBUTIONS.—For purposes of this paragraph, a qualified contribution shall mean a charitable contribution of property described in section 1245(a)(3) by the taxpayer to an organization which is described in section 501(c)(3) and is exempt under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), but only if—

"(i) the use of the property by the donee is related to the purpose or function constituting the basis for the donee's exemption under section 501,

"(ii) the property is to be used within the 90-day period beginning on the date on which such contribution is made solely for the training of individuals who are disabled or needy,

"(iii) the property is not transferred by the donee in exchange for money, other property, or services, and

"(iv) the taxpayer receives from the donee a written statement representing that the use and disposition of the property will be in accordance with the provisions of clauses (i), (ii), and (iii).

"(B) AMOUNT OF DEDUCTION.—Notwithstanding any other provision of this subsection, the amount allowable as a deduction under subsection (a) for any qualified contribution (as defined in subparagraph (A)) shall be an amount equal to the greater of—

"(i) the taxpayer's basis in the property contributed, or

"(ii) the lesser of—

"(I) the fair market value (determined at the time of such contribution) of such property, or

"(II) the taxpayer's acquisition cost for such property.

"(C)

"(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to contributions made after December 31, 1991, in taxable years ending after such date.

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AMENDMENT NO. 998

At the appropriate place, insert the following new section:

**SEC. . APPLICATION ON FAIR LABOR STANDARDS ACT OF 1938.**

(a) MINIMUM WAGE.—

(1) SPECIAL INDUSTRY COMMITTEES.—Section 5(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 205(a)) is amended—

(A) by striking the phrase "engaged in commerce or in the production of goods for commerce, or employed in any enterprise engaged in commerce or in the production of goods for commerce" each time that it appears and inserting in lieu thereof each time the following: "who are: (i) engaged in industrial homework subject to 11(d) and are either (A) engaged in commerce or (B) engaged in the production of goods for commerce; or (ii) employed in an enterprise engaged in commerce or in the production of goods for commerce".

(2) MINIMUM WAGE.—Section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) is amended by striking the phrase "who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce" and inserting in lieu thereof the following: "who in any workweek is: (i) engaged in industrial homework subject to 11(d) and is either (A) engaged in commerce or (B) engaged in the production of goods for commerce; or (ii) employed in an enterprise engaged in commerce or in the production of goods for commerce".

(3) WAGE ORDERS.—Section 8(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 208(a)) is amended by striking out "employers in American Samoa engaged in commerce or in the production of goods for commerce or" and inserting in lieu thereof "employers in American Samoa".

(b) MAXIMUM HOURS.—Paragraphs (1) and (2) of section 7(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)) are each amended by striking the phrase "who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce" and inserting in lieu thereof the following: "who in any work-week is: (i) engaged in industrial homework subject to 11(d) and is either (A) engaged in commerce or (B) engaged in the production of goods for commerce; or (ii) employed in an enterprise engaged in commerce or in the production of goods for commerce".

(c) SEX DISCRIMINATION.—Paragraphs (1) and (2) of section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)) are each amended by inserting after "employees

subject to any provisions of this section" the following: "or employees engaged in commerce or in the production of goods for commerce".

(d) HANDICAPPED WORKERS.—Section 14(c)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)(1)) is amended by inserting after "injury" the following: "and who are engaged in commerce or in the production of goods for commerce, or who are employed in an enterprise engaged in commerce or in the production of goods for commerce".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 3 of the Fair Labor Standards Amendments of 1989.

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AMENDMENT NO. 999

At the appropriate place, add the following new section:

**SEC. . DEPARTMENT OF LABOR REGULATIONS.**

(a) IN GENERAL.—Section 11(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(d)) is amended—

(1) by striking out "Administrator" each place that such appears and inserting in lieu thereof "Secretary"; and

(2) by striking out "regulating, restricting, or prohibiting" and inserting in lieu thereof "regulating or restricting".

(b) EFFECT ON EXISTING REGULATIONS AND ORDERS.—Any regulation or order of the Secretary of Labor made under section 11(d) of the Fair Labor Standards Act of 1938, as such section existed immediately prior to the date of enactment of this Act, that is not authorized under such section as amended by subsection (a), shall as of the date of enactment, be of no force or effect.

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## KOHL (AND WELLSTONE) AMENDMENTS NOS. 1000 THROUGH 1002

(Ordered to lie on the table.)

Mr. KOHL (for himself and Mr. WELLSTONE) submitted three amendments intended to be proposed by them to the bill S. 1554, supra, as follows:

AMENDMENT NO. 1000

At the appropriate place add the following:

**SECTION . EMERGENCY DAIRY ADJUSTMENTS.**

(a) ADJUSTMENT IN PRICE SUPPORT.—Subsection (d) of section 204 of the Agricultural Act of 1949 (7 U.S.C. 1446e(d)(4)) is amended by adding at the end thereof the following new paragraph:

"(6) INCREASE IN PRICE SUPPORT.—Notwithstanding any other provision of this section, the Secretary may at any time increase the rate of price support for milk and the products of milk to a rate that is greater than $10.10 per hundredweight."

(b) EFFECTIVE DATE.—Notwithstanding the provisions of section 10 of this Act, the amendment provided for by this section shall be effective upon the date of enactment of this Act.

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AMENDMENT NO. 1001

At the end of the bill, insert the following new section:

**SECTION . EMERGENCY DAIRY ADJUSTMENTS.**

It is the Sense of the Congress that—

(1) the provisions of section 204 of the Agricultural Act of 1949 provide the Secretary of Agriculture with sufficient authority to increase the rate of price suport for milk and the products of milk in effect for the calendar years 1991 through 1995 to a rate that is greater than $10.10 per hundredweight; and

(2) the Secretary of Agriculture should use such authority to immediately increase the rate of price support for milk and the products of milk to a rate that is not less than $12.60 per hundredweight.

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AMENDMENT NO. 1002

At the end of the bill, insert the following new section:

**SECTION . EMERGENCY DAIRY ADJUSTMENTS.**

(a) ADJUSTMENT IN PRICE SUPPORT.—Subsection (d) of section 204 of the Agricultural Act of 1949 (7 U.S.C. 1446e(d)(4)) is amended by adding at the end thereof the following new paragraph:

"(6) INCREASE IN PRICE SUPPORT.—Notwithstanding any other provision of this section, the Secretary may at any time increase the rate of price support for milk and the products of milk to a rate that is greater than $10.10 per hundredweight."

(b) EFFECTIVE DATE.—Notwithstanding the provisions of section 10 of this Act, the amendment provided for by this section shall be effective upon the date of enactment of this Act.

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## GRAMM AMENDMENTS NOS. 1003 THROUGH 1012

(Ordered to lie on the table.)

Mr. GRAMM submitted 10 amendments intended to be proposed by him to the bill S. 1554, supra, as follows:

AMENDMENT NO. 1003

Strike all after the enacting clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

"ARTICLE—

"SECTION 1. Prior to each fiscal year, Congress shall adopt a statement of receipts and outlays for such fiscal year in which total outlays are not greater than total receipts. Congress may amend such statement provided revised outlays are not greater than revised receipts. Congress may provide in such statement for a specific excess of outlays over receipts by a vote directed solely to that subject in which three-fifths of the whole number of each House agree to such excess. The Congress and the President shall ensure that actual outlays do not exceed the outlays set forth in such statement.

"SEC. 2. Total receipts for any fiscal year set forth in the statement adopted pursuant to the first section of this article shall not increase by a rate greater than the rate of increase in national income in the year or years ending not less than six months before such fiscal year, unless a majority of the whole number of each House of Congress shall have passed a bill directed solely to approving specific additional receipts and such bill as become law.

"SEC. 3. Prior to each fiscal year, the President shall transmit to Congress a proposed statement of receipts and outlays for such fiscal year consistent with the provisions of this article.

"SEC. 4. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.

"SEC. 5. Total receipts shall include all receipts of the United States except those derived from borrowing and total outlays shall include all outlays of the United States except those for the repayment of debt principal.

"SEC. 6. The amount of Federal public debt as of the first day of the second fiscal year beginning after the ratification of this article shall become a permanent limit on such debt and there shall be no increase in such amount unless three-fifths of the whole number of each House of Congress shall have passed a bill approving such increase and such bill has become law.

"SEC. 7. The Congress shall enforce and implement this article by appropriate legislation.

"SEC. 8. This article shall take effect for the fiscal year 1993 or for the second fiscal year beginning after its ratification.".

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AMENDMENT NO. 1004

At the appropriate place, insert the following new title:

TITLE —REDUCTION IN SOCIAL SECURITY PENALTY ON WORKING ELDERLY

**Sec. 01. PHASED-IN INCREASES IN THE EARNINGS TEST OVER THE PERIOD 1992-1997 FOR INDIVIDUALS WHO HAVE ATTAINED NORMAL RETIREMENT AGE.**

(a) IN GENERAL.—Subparagraph (D) of section 203(f)(8) of the Social Security Act (42 U.S.C. 403(f)(8)) is amended to read as follows:

"(D)(i) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(1)) before the close of the taxable year involved shall be—

"(I) for each month of the taxable year ending after 1991 and before 1993, the exempt amount so applicable for each month of the preceding taxable year, plus ½2 of $1,000,

"(II) for each month of the taxable year ending after 1992 and before 1994, the exempt amount so applicable for each month of the preceding taxable year, plus ½2 of $1,000,

"(III) for each month of the taxable year ending after 1993 and before 1995, the exempt amount so applicable for each month of the preceding taxable year, plus ½2 of $1,000,

"(IV) for each month of the taxable year ending after 1994 and before 1996, the exempt amount so applicable for each month of the preceding taxable year, plus ½2 of $1,000,

"(V) for each month of the taxable year ending after 1995 and before 1997, the exempt amount so applicable for each month of the preceding taxable year, plus ½2 of $1,000,

"(VI) for each month of the taxable year ending after 1996 and before 1998, the exempt amount so applicable for each month of the preceding taxable year, plus ½2 of $1,000.

"(ii) For purposes of subparagraph (B)(ii)(II), the increase in the exempt amount provided under clause (i)(VI) shall be deemed to have resulted from a determination which shall be deemed to have been made under subparagraph (A) in 1996.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years ending after 1991.

**SEC. 02. TRANSFERS TO TRUST FUNDS.**

(a) IN GENERAL.—There are hereby appropriated to each payor fund amounts equivalent to the aggregate increase in social security benefits payable from such fund which is attributable to the amendment made by section 01.

(b) TRANSFERS.—The amounts appropriated by subsection (a) to a payor fund shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such subsection. Any such quarterly payment shall

be made on the first day of such quarter and shall take into account social security benefits estimated to be received during such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(c) DEFINITIONS.—For purposes of this section—

(1) Payor fund.—The term "payor fund" means the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

(2) Social security benefits.—The term "social security benefits" means any amount received by a person by reason of entitlement to monthly benefits under title II of the Social Security Act.

(d) REPORTS.—The Secretary of the Treasury shall submit annual reports to the Congress and to the Secretary of Health and Human Services on—

(1) the transfers made under this section during the year, and the methodology used in determining the amount of such transfers and the payor funds to which made, and

(2) the anticipated operation of this section during the next 5 years.

**SEC. 03. STUDY TO DETERMINE IMPACT OF TOTAL REPEAL.**

(a) STUDY.—The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall undertake in 1997 a study for the purpose of determining whether further amendments relating to deductions on account of work and the exempt amount provided for under section 203 of the Social Security Act are necessary or appropriate. Such study shall be conducted in full consultation with the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce. The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce shall provide the Secretary with such appropriate assistance and information requested by the Secretary as the Secretary considers necessary and appropriate to carry out the study under this section.

(b) SPECIFIC MATTERS TO BE STUDIED.—

(1) IN GENERAL.—The Secretary, in carrying out the study provided for in this section, shall address, analyze, and report specifically on various effects—

(A) which have resulted from the amendment made by section 01, and

(B) which would reasonably be expected to result from repeal, effective with respect to taxable years ending after calendar year 1997, of the provisions relating to deductions on account of work and the exempt amount provided for under section 203 of the Social Security Act.

The Secretary shall include in the report any other information which the Secretary considers would be relevant and useful to the Congress in considering legislation relating to deductions on account of work and the exempt amount.

(2) Effects to be included in study.—The effects referred to in paragraph (1) shall include—

(A) the effect on numbers in the workforce, by category of income;

(B) the effect on the purchasing power of members of the workforce, expressed in constant dollars;

(C) the effect on the working elderly with wage or salary income at or below the national average wage level;

(D) the short-term and long-term effect on the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund;

(E) the effect on the Federal budget; and

(F) the effect on the national economy.

(c) REPORTS.—The Secretary shall submit to each House of the Congress, not later than November 1, 1997, a final report of the findings of such study.

**SEC. . EMERGENCY DESIGNATION.**

(a) EMERGENCY DESIGNATION.—Pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Congress hereby designates all direct spending amounts and receipts legislation provided by this title (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EFFECTIVENESS.—Notwithstanding any other provision of law or any other provision of this Act (including section 10), none of the preceding sections of this Act shall take effect unless the President submits to the Congress a written designation of all direct spending amounts and receipts legislation provided by this Act (for all fiscal years) and all appropriations authorized by this act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

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AMENDMENT NO. 1005

At the appropriate place, insert the following new title:

TITLE —ECONOMIC GROWTH DIVIDEND

**SEC. 01. USE OF ECONOMIC GROWTH DIVIDEND.**

(a) GENERAL RULE.—If the Secretary of the Treasury (hereinafter in this title referred to as the "Secretary") determines that there is an economic growth dividend for any fiscal year beginning on or after October 1, 1992, such dividend shall be used to increase the amount of the personal exemptions as provided in section 02.

(b) ECONOMIC GROWTH DIVIDEND.—For purposes of this Act—

(1) there is an economic growth dividend for any fiscal year if the Secretary determines that the real growth in the gross national product during such fiscal year was at a rate in excess of 3 percent, and

(2) the amount of the economic growth dividend for such fiscal year is the amount which the Secretary estimates will be the annual increase in Federal tax receipts resulting from the real growth in the gross national product during such fiscal year at a rate in excess of 3 percent.

Determinations under the preceding sentence shall be made before the close of the calendar year in which the fiscal year ends.

(c) SPECIAL RULE FOR FISCAL YEARS BEFORE 1996.—In the case of any fiscal year beginning before October 12, 1995, subsection (b) shall be applied by substituting for "3 percent" each place it appears the estimated rate of real growth in the gross national product for such fiscal year as set forth in the President's budget submission for such fiscal year under section 1105 of title 31, United States Code.

**SEC. 02. INCREASE IN AMOUNT OF PERSONAL EXEMPTIONS.**

(a) GENERAL RULE.—If the Secretary determines that there is an economic growth dividend for any fiscal year beginning on or after October 1, 1992, the amount of the exemption amount for taxable years beginning after the close of the calendar year in which such fiscal year ends shall be increased by an amount which the Secretary estimates will reduce Federal tax receipts for taxable years beginning in the following calendar year by an amount equal to 100 percent of the amount of such economic growth dividend.

(b) SPECIAL RULE FOR FISCAL YEARS BEFORE 1996.—In the case of any fiscal year beginning before October 1, 1995, 50 percent of the economic growth dividend shall be used in accordance with subsection (3), and 50 percent of the growth dividend shall be used to make a downward adjustment in the maximum deficit amount of section 250(c)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(c) EXEMPTION AMOUNT.—For purposes of this section, the term "exemption amount" means the amount which would otherwise be the exemption amount under section 151(d) of the Internal Revenue Code of 1986 before the application of paragraphs (2) and (3) thereof.

(d) INFLATION ADJUSTMENTS.—Any increase determined under this section shall be adjusted for increases in the cost of living under procedures similar to those provided in section 151(d)(4) of such Code.

**SEC. EMERGENCY DESIGNATION.**

(a) EMERGENCY DESIGNATION.—Pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Congress hereby designates all direct spending amounts and receipts legislation provided by this title (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EFFECTIVENESS.—Notwithstanding any other provision of law or any other provision of this Act (including section 10), none of the preceeding sections of this Act shall take effect unless the President submits to the Congress a written designation of all direct spending amounts and receipts legislation provided by this Act (for all fiscal years) and all appropriations authorized by this Act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

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AMENDMENT NO. 1006

At the appropriate place, insert the following new title:

TITLE —FIRST-TIME HOMEBUYERS TAX CREDIT

**SEC. 01. CREDIT FOR PURCHASE OF PRINCIPAL RESIDENCE BY FIRST-TIME HOMEBUYER.**

(a) GENERAL RULE.—Subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) is amended by redesignating section 35 as section 36 and by inserting after section 34 the following new section:

**"SEC. 35. PURCHASE OF PRINCIPAL RESIDENCE BY FIRST-TIME HOMEBUYER.**

"(a) ALLOWANCE OF CREDIT.—If an individual who is a first-time homebuyer purchases a principal residence during the taxable year, there shall be allowed to such individual as a credit against the tax imposed by this subtitle for such taxable year an amount equal to $1,000.

"(b) INCOME LIMITATIONS.—

"(1) IN GENERAL.—No credit shall be allowed under subsection (a) to any individual whose adjusted gross income for the taxable year exceeds $41,000.

"(2) PHASE-DOWN OF CREDIT.—The $1,000 amount set forth in subsection (a) shall be reduced by $10 for each $100 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $31,000.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' has the meaning given to such term by section 408(e)(3)(E)(ii).

"(2) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(3) PURCHASE.—The term 'purchase' means any acquisition of property, but only if the basis of such property in the hands of the person acquiring it is not determined—

"(A) in whole or in part by the reference to the adjusted basis of such property in the hands of the person from whom acquired, or

"(B) under section 1014(a) (relating to property acquired from a decedent).

"(4) TREATMENT OF MARRIED INDIVIDUALS.—The adjusted gross income of any individual for any taxable year shall include the adjusted gross income of such individual's spouse for such spouse's taxable year corresponding to the taxable year of the individual. For purposes of the preceding sentence, marital status shall be determined under section 7703; except that an individual shall not be treated as being married if such individual would not be treated as being married under section 21(e)(4).

"(5) JOINT PURCHASES.—If a residence is purchased together by 2 or more individuals for use as their principal residence—

"(A) such individuals shall be limited to 1 credit under this section for such purchase and the amount of such credit shall be allocated among such individuals in the manner prescribed by the Secretary,

"(B) no credit shall be allowed under this section for such purchase unless all of such individuals are first-time homebuyers, and

"(C) the aggregate adjusted gross income of all of such individuals shall be taken into account in determining the amount of the credit allowable under this section for such purchases."

(b) CLERICAL AMENDMENTS.—The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 35 and inserting the following:

"Sec. 35. Purchase of principal residence by first-time homebuyer.
"Sec. 36. Overpayments of tax."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to principal residences purchased after July 31, 1991.

**SEC. . EMERGENCY DESIGNATION.**

(a) EMERGENCY DESIGNATION.—Pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Congress hereby designates all direct spending amounts and receipts legislation provided by this title (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EFFECTIVENESS.—Notwithstanding any other provision of law or any other provision of this Act (including section 10), none of the preceding sections of this Act shall take effect unless the President submits to the Congress a written designation of all direct spending amounts and receipts legislation provided by this Act (for all fiscal years) and all appropriations authorized by this Act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

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## AMENDMENT NO. 1007

At the appropriate place, insert the following new title:

TITLE—PENALTY-FREE IRA PLUS WITHDRAWAL FOR HOME PURCHASE, HIGHER EDUCATION, AND HEALTH COSTS

**SEC. 01. PENALTY-FREE IRA PLUS WITHDRAWAL FOR HOME PURCHASE, HIGHER EDUCATION, AND HEALTH COSTS.**

(a) GENERAL RULE.—Subparagraph (A) of section 408A(d)(3) (as added by title II) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or", and by adding at the end thereof the following new clause:

"(iv) which is a qualified special purpose distribution (within the meaning of subsection (e)).

(b) QUALIFIED SPECIAL PURPOSE DISTRIBUTION DEFINED.—Section 408A (as so added) is amended by redesignating subsections (e) and (f) as (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

"(e) QUALIFIED SPECIAL PURPOSE DISTRIBUTION FROM IRA PLUS ACCOUNTS.—For purposes of this section—

" IN GENERAL.—The term 'qualified special purpose distribution' means—

"(A) a qualified first-time homebuyer distribution, or

"(B) an applicable medical or educational distribution.

"(2) 25 percent account limit.—

"(A) IN GENERAL.—A distribution shall not be treated as a qualified special purpose distribution to the extent it exceeds the amount (if any) by which—

"(i) 25 percent of the sum of—

"(I) the aggregate balance of individual retirement plus accounts established on behalf of an individual, plus

"(II) the aggregate amounts previously treated as qualified special purpose distributions, exceeds

"(ii) the amount determined under clause (i)(II).

"(B) LIMITATION NOT TO APPLY FOR PURPOSES OF SECTION 72(T).—Section 72(t) shall not apply to any distribution which would be a qualified distribution but for the limitations of subparagraph (A).

"(3) DISTRIBUTIONS FROM IRA PLUS ACCOUNTS USED TO PURCHASE A HOME BY FIRST-TIME HOMEBUYER.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'qualified first-time homebuyer distribution' means any payment or distribution received by a first-time homebuyer (or by a parent or grandparent of a first-time homebuyer) from an individual retirement plan to the extent such payment or distribution is used by the individual receiving the payment or distribution before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence for such first-time homebuyer.

"(B) BASIS REDUCTION.—The basis of any principal residence described in subparagraph (A) shall be reduced by any amount excluded from the gross income of such first-time homebuyer (or parent or grandparent thereof) by reason of this section.

"(C) RECOGNITION OF GAIN AS ORDINARY INCOME.—

"(i) IN GENERAL.—Notwithstanding any other provision of this subtitle, except as provided in clause (ii)—

"(I) gain (if any) on the sale or exchange of a principal residence to which subparagraph (A) applies shall, to the extent of the amount excluded from gross income under this section, be treated as ordinary income by such individual, and

"(II) section 72(t) shall apply to such amount.

"(ii) EXCEPTION.—Clause (i) shall not apply to any taxable year to the extent of any amount which, before the due date (without extensions) for filing the return for such year, the taxpayer contributes to an individual retirement plus account. Such amount shall not be taken into account for purposes of any provision of this title relating to excess contributions.

"(iii) COORDINATION WITH OTHER PROVISIONS.—In the event all or part of the gain referred to in clause (i) is treated as ordinary income under any other provision of this subtitle, such provision shall be applied before clause (i).

"(D) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If—

"(i) any amount is paid or distributed from an individual retirement plus account to an individual for purposes of being used as provided in subparagraph (A), and

"(ii) by reason of a delay in the acquisition of the residence, such amount cannot be so used,

the amount so paid or distributed may be paid into an individual retirement plus account as provided in section 408(d)(3)(A)(i) without regard to section 408(d)(3)(B), and, if so paid into such other plan, such amount shall not be taken into account in determining whether section 408(d)(3)(A)(i) applies to any other amount.

"(E) DEFINITIONS.—For purposes of this paragraph—

"(i) QUALIFIED ACQUISITION COSTS.—The term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

"(ii) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this paragraph applies.

"(iii) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(iv) DATE OF ACQUISITION.—The term 'date of acquisition' means the date—

"(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

"(II) on which construction or reconstruction of such a principal residence is commenced.

"(4) APPLICABLE MEDICAL DISTRIBUTIONS FROM IRA PLUS ACCOUNTS.—For purposes of paragraph (1), the term 'applicable medical distributions' means any distributions made to an individual (not otherwise taken into account under this subsection) to the extent such distributions do not exceed the amount allowable as a deduction under section 213 for amounts paid during the taxable year for medical care (without regard to whether the individual itemized deductions for the taxable year). For purposes of determining the amount so allowable, any child or grandchild of the taxpayer shall be treated as a dependent of the taxpayer.

"(5) DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLUS ACCOUNTS FOR EDUCATIONAL EXPENSES.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'applicable educational distributions' means distributions to an individual to the extent that the amount of such distributions (not otherwise treated as quali-

fied special purpose distributions, determined after application of paragraph (4)) does not exceed the qualified higher education expenses of the individual for the taxable year.

"(B) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of—

"(I) the taxpayer,

"(II) the taxpayer's spouse, or

"(III) the taxpayer's child (as defined in section 151(c)(3)) or grandchild, at an eligible educational institution (as defined in section 135(c)(3)).

"(ii) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified higher education expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

**SEC. . EMERGENCY DESIGNATION.**

(a) EMERGENCY DESIGNATION.—Pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Congress hereby designates all direct spending amounts and receipts legislation provided by this title (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EFFECTIVENESS.—Notwithstanding any other provision of law or any other provision of this Act (including section 10), none of the preceeding sections of this Act shall take effect unless the President submits to the Congress a written designation of all direct spending amounts and receipts legislation provided by this Act (for all fiscal years) and all appropriations authorized by this Act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

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AMENDMENT NO. 1008

At the appropriate place, insert the following new title:

TITLE —SAVINGS INCENTIVES

**SEC. 01. ESTABLISHMENT OF INDIVIDUAL RETIREMENT PLUS ACCOUNTS.**

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by inserting after section 408 the following new section:

**"408A. INDIVIDUAL RETIREMENT PLUS ACCOUNTS.**

"(a) GENERAL RULE.—Except as provided in this section, an individual retirement plus account shall be treated for purposes of this title in the same manner as an individual retirement plan.

"(b) INDIVIDUAL RETIREMENT PLUS ACCOUNT.—For purposes of this title, the term 'individual retirement plus account' means an individual retirement plan which is designated at the time of the establishment of the plan as an individual retirement plus account. Such designation shall be made in such manner as the Secretary may prescribe.

"(c) CONTRIBUTION RULES.—

"(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to an individual retirement plus account.

"(2) CONTRIBUTION LIMIT.—

"(A) IN GENERAL.—Except in the case of rollover contributions, the aggregate amount which may be accepted as contributions to an individual retirement plus account shall not be greater than the excess (if any) of—

"(i) the nondeductible limit with respect to the individual for the taxable year under section 408(o) (after application of subparagraph (B)(ii) thereof), over

"(ii) the designated nondeductible contributions made by the individual for such taxable year to 1 or more individual retirement plans.

"(B) $1,000 INCREASE AFTER 1996.—In the case of any taxable year beginning after December 31, 1996, the amount determined under subparagraph (A)(i) (without regard to this subparagraph) shall be increased by $1,000.

"(C) SPECIAL RULE FOR MARRIED INDIVIDUALS.—The nondeductible limits under subparagraph (A) for an individual and for such individual's spouse shall be an amount equal to the excess (if any) of—

"(i) $2,000, over

"(ii) the sum of the amount allowed as a deduction under section 219 for contributions on behalf of such individual or such spouse, plus the amount determined under subparagraph (A)(ii) with respect to each.

In no event shall the sum of such limits exceed an amount equal to the sum of the compensation includible in the individual's and spouse's gross income for the taxable year, reduced by the sum of the amounts determined under clause (ii).

"(3) CONTRIBUTIONS AFTER AGE 70½.—Contributions may be made by an individual to an individual retirement plus account after such individual has attained the age of 70½.

"(4) LIMITATIONS ON ROLLOVER CONTRIBUTIONS.—No rollover contributions may be made to an individual retirement plus account unless such rollover contribution is a contribution of a distribution or payment out of—

"(A) another individual retirement plus account, or

"(B) an individual retirement plan which is not allocable to any amount transferred to such plan which represented any portion of the balance to the credit of an employee in a qualified trust (or any income allocable to such portion).

"(d) DISTRIBUTION RULES.—For purposes of this title—

"(1) IN GENERAL.—Except in the case of a qualified distribution, the rules of paragraphs (1) and (2) of section 408(d) shall apply to any distribution from an individual retirement plus account.

"(2) TREATMENT OF QUALIFIED DISTRIBUTION.—In the case of a qualified distribution from an individual retirement plus account—

"(A) the amount of such distribution shall not be includible in gross income; and

"(B) section 72(t) shall not apply.

"(3) QUALIFIED DISTRIBUTION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified distribution' means any distribution—

"(i) made on or after the date on which the individual attains age 59½,

"(ii) made to a beneficiary (or to the estate of an individual) on or after the death of the individual, or

"(iii) attributable to the employee's being disabled (within the meaning of section 72(m)(7)).

"(B) DISTRIBUTIONS WITHIN 5 YEARS.—No distribution shall be treated as a qualified distribution if—

"(i) it is made within the 5-taxable year period beginning with the 1st taxable year in which the individual made a contribution to an individual retirement plus account, or

"(ii) in the case of a distribution properly allocable to a rollover contribution (or income allocable thereto), it is made within 5 years of the date on which such rollover contribution was made.

"(4) SPECIAL RULES RELATING TO ROLLOVERS FROM REGULAR INDIVIDUAL RETIREMENT ACCOUNTS.—

"(A) IN GENERAL.—Except as provided in this paragraph, any amount paid or distributed out of an individual retirement plan on or before the earlier of—

"(i) the date on which the individual attains age 55, or

"(ii) June 30, 1993,

shall not be included in gross income (and section 72(t) shall not apply to such amount) if the individual receiving such amount transfers, within 60 days of receipt, the entire amount received to an individual retirement plus account.

"(B) TREATMENT OF TAX-FAVORED AMOUNTS.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A), there shall be included in gross income (but section 72(t) shall not apply to) the portion of any amount transferred which bears the same ratio to such amount as—

"(I) the aggregate amount of contributions to individual retirement plans with respect to which a deduction was allowable under section 219, bears to

"(II) the aggregate balance of such plans.

"(ii) TIME FOR INCLUSION.—Any amount described in clause (i) shall be included in gross income ratably over the 4-taxable year period beginning with the taxable year in which the amount was paid or distributed out of the individual retirement plan.

"(e) ROLLOVER CONTRIBUTIONS.—For purposes of this section, the term 'rollover contributions' means contributions described in sections 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), and 408(d)(3).

"(f) DETERMINATIONS.—For purposes of this section, any determinations with respect to aggregate contributions to, or the balance of, individual retirement plus accounts shall be made as of the close of the calendar year preceding the calendar year in which the taxable year begins.".

(b) CONFORMING AMENDMENT.—The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 408 the following new item:

"Sec. 408A. Individual retirement plus accounts.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

**SEC. . EMERGENCY DESIGNATION.**

(a) EMERGENCY DESIGNATION.—Pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Congress hereby designates all direct spending amounts and receipts legislation provided by this title (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EFFECTIVENESS.—Notwithstanding any other provision of law or any other provision of this Act (including section 10), none of the preceding sections of this Act shall take effect unless the President submits to the Congress a written designation of all direct spending amounts and receipts legislation provided by this Act (for all fiscal years) and all appropriation authorized by this Act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced

Budget and Emergency Deficit Control Act of 1985.

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AMENDMENT NO. 1009

At theappropriate place, insert the following new title:

TITLE —RESEARCH AND EXPERIMENTATION CREDIT MADE PERMANENT

**SEC. 01. RESEARCH AND EXPERIMENTATION CREDIT MADE PERMANENT.**

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating tc credit for increasing research activities) is amended by striking subsection (h).

(b) CONFORMING AMENDMENT.—Section 28(b)(1) of the Internal Revenue Code of 1986 (relating to clinical testing expenses for certain drugs for rare diseases or conditions) is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

**SEC. . EMERGENCY DESIGNATION.**

(a) EMERGENCY DESIGNATION.—Pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Congress hereby designates all direct spending amounts and receipts legislation provided by this title (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EFFECTIVENESS.—Notwithstanding any other provision of law or any other provision of this Act (including section 10), none of the preceeding sections of this Act shall take effect unless the President submits to the Congress a written designation of all direct spending amounts and receipts legislation provided by this Act (for all fiscal years) and all appropriations authorized by DHS Act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

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AMENDMENT NO. 1010

At the appropriate place, insert the following new title:

**TITLE _____—INVESTMENT AND JOB CREATION INCENTIVES**

**Subtitle A—Reduction in Capital Gains Tax for Individuals**

**SEC. _____01. REDUCTION IN CAPITAL GAINS TAX FOR INDIVIDUALS.**

(a) GENERAL RULE.—Part I of subchapter P of chapter 1 is amended by adding at the end thereof the following new section:

**"SEC. 1202. DEDUCTION FOR CAPITAL GAINS.**

"(a) DEDUCTION ALLOWED FOR CAPITAL GAIN.—

"(1) IN GENERAL.—If, for any taxable year, a taxpayer other than a corporation has a net capital gain, an amount equal to the sum of the applicable percentages of the applicable capital gain shall be allowed as a deduction.

"(2) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction under paragraph (1) shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.

"(b) APPLICABLE PERCENTAGES.—For purposes of this subsection, the applicable percentages shall be the percentages determined in accordance with the following table:

| "In the case of: | The applicable percentage is: |
|---|---|
| 1-year gain | 10 |
| 2-year gain | 20 |
| 3-year gain | 30. |

"(c) GAIN TO WHICH DEDUCTION APPLIES.—For purposes of this section—

"(1) APPLICABLE CAPITAL GAIN.—The term 'applicable capital gain' means 1-year gain, 2-year gain, or 3-year gain determined by taking into account only gain which is properly taken into account for periods on or after April 15, 1991.

"(2) 3-YEAR GAIN.—The term '3-year gain' means the lesser of—

"(A) the net capital gain for the taxable year, or

"(B) the long-term capital gain determined by taking into account only gain from the sale or exchange of assets held more than 3 years.

"(3) 2-YEAR GAIN.—The term '2-year gain' means the lesser of—

"(A) the net capital gain for the taxable year, reduced by 3-year gain, or

"(B) the long-term capital gain determined by taking into account only gain from the sale or exchange of assets held more than 2 years but not more than 3 years.

"(4) 1-YEAR GAIN.—The term '1-year gain' means the net capital gain for the taxable year determined by taking into account only—

"(A) gain from the sale or exchange of assets held more than 1 year but not more than 2 years, and

"(B) losses from the sale or exchange of assets held more than 1 year.

"(5) SPECIAL RULES FOR GAIN ALLOCABLE TO PERIODS BEFORE 1993.—For purposes of this section—

"(A) GAIN ALLOCABLE TO PERIODS AFTER APRIL 15, 1991, AND BEFORE 1992.—In the case of any gain from any sale or exchange which is properly taken into account for the period beginning on April 15, 1991, and ending on December 31, 1991, gain which is 1-year gain or 2-year gain (without regard to this subparagraph) shall be treated as 3-year gain.

"(B) GAIN ALLOCABLE TO 1992.—In the case of any gain from any sale or exchange which is properly taken into account for periods during 1992, gain which is 1-year gain or 2-year gain (without regard to this subparagraph) shall be treated as 2-year gain and 3-year gain, respectively.

"(6) SPECIAL RULES FOR PASS-THRU ENTITIES.—

"(A) IN GENERAL.—In applying this subsection with respect to any pass-thru entity, the determination of when a sale or exchange has occurred shall be made at the entity level.

"(B) PASS-THRU ENTITY DEFINED.—For purposes of subparagraph (A), the term 'pass-thru entity' means—

"(i) a regulated investment company,

"(ii) a real estate investment trust,

"(iii) an S corporation,

"(iv) a partnership,

"(v) an estate or trust, and

"(vi) a common trust fund.

"(7) RECAPTURE OF NET ORDINARY LOSS UNDER SECTION 1231.—For purposes of this subsection, if any amount is treated as ordinary income under section 1231(c) for any taxable year—

"(A) the amount so treated shall be allocated proportionately among the section 1231 gains (as defined in section 1231(a)) for such taxable year, and

"(B) the amount so allocated to any such gain shall reduce the amount of such gain."

(b) TREATMENT OF COLLECTIBLES.—

(1) IN GENERAL.—Section 1222 is amended by inserting after paragraph (11) the following new paragraph:

"(12) SPECIAL RULE FOR COLLECTIBLES.—

"(A) IN GENERAL.—Any gain or loss from the sale or exchange of a collectible shall be treated as a short-term capital gain or loss (as the case may be), without regard to the period such asset was held. The preceding sentence shall apply only to the extent the gain or loss is taken into account in computing taxable income.

"(B) TREATMENT OF CERTAIN SALES OF INTEREST IN PARTNERSHIP, ETC.—For purposes of subparagraph (A), any gain from the sale or exchange of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles held by such entity shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751(f) shall apply for purposes of the preceding sentence.

"(C) COLLECTIBLE.—For purposes of this paragraph, the term 'collectible' means any capital asset which is a collectible (as defined in section 408(m) without regard to paragraph (3) thereof)."

(2) CHARITABLE DEDUCTION NOT AFFECTED.—(A) Paragraph (1) of section 170(e) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)."

(B) Clause (iv) of section 170(b)(1)(C) is amended by inserting before the period at the end thereof the following: "and section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)".

(c) MINIMUM TAX.—Section 56(b) is amended by adding at the end thereof the following new paragraph:

"(4) CAPITAL GAINS DEDUCTION DISALLOWANCE.—The deduction under section 1202 shall not be allowed."

(d) CONFORMING AMENDMENTS.—

(1) Subsection (h) of section 1 is hereby repealed.

(2) Section 12 is amended by striking paragraph (4) and redesignating the following paragraphs accordingly.

(3) Section 62(a) is amended by inserting after paragraph (13) the following new paragraph:

"(14) CAPITAL GAINS DEDUCTION.—The deduction allowed by section 1202."

(4) Clause (ii) of section 163(d)(4)(B) is amended by inserting ", reduced by the amount of any deduction allowable under section 1202 attributable to gain from such property" after "investment".

(5)(A) Section 170(e)(1)(B) is amended by inserting "(or, in the case of a taxpayer other than a corporation, the nondeductible percentage of the amount of gain)" after "the amount of gain".

(B) Section 170(e)(1) is amended by adding at the end thereof the following new sentence: "For purposes of subparagraph (B), the term 'nondeductible percentage' means 100 percent minus the applicable percentage with respect to such property under section 1202(b)."

(6)(A) Section 172(d)(2) (relating to modifications with respect to net operating loss deduction) is amended to read as follows:

"(2) CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation—

"(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible

on account of gains from sales or exchanges of capital assets; and

"(B) the deduction provided by section 1202 shall not be allowed."

(B) Subparagraph (B) of section 172(d)(4) is amended by inserting ", (2)(B)," after "paragraph (1)".

(7)(A) Section 221 (relating to cross reference) is amended to read as follows:

**"SEC. 221. CROSS REFERENCES.**

**"(1) For deduction for net capital gain, see section 1201.**

**"(2) For deductions in respect of a decedent, see section 691."**

(B) The table of sections for part VII of subchapter B of chapter 1 is amended by striking "reference" in the item relating to section 221 and inserting "references".

(8) Paragraph (4) of section 642(c) is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 1 year, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for net capital gain). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

(9) Paragraph (3) of section 643(a) is amended by adding at the end thereof the following new sentence: "The deduction under section 1202 (relating to deduction for net capital gain) shall not be taken into account."

(10) Paragraph (6)(C) of section 643(a) is amended—

(A) by inserting "(i)" before "there", and

(B) by inserting ", and (ii) the deduction under section 1202 (relating to deduction for excess of capital gains over capital losses)" before the period at the end thereof.

(11) Paragraph (4) of section 691(c) is amended by striking "1(h),".

(12) The second sentence of paragraph (2) of section 871(a) is amended by inserting "such gains and losses shall be determined without regard to section 1202 (relating to deduction for net capital gain) and" after "except that".

(13)(A) Subparagraph (B) of section 904(b)(2) is amended by striking out so much of such subparagraph as precedes clause (i) and inserting the following:

"(B) SPECIAL RULES WHERE CORPORATE CAPITAL RATE GAIN DIFFERENTIAL.—In the case of a corporation, for any taxable year for which there is a capital gain rate differential—".

(B) Subparagraphs (D) and (E) of section 904(b)(3) are amended to read as follows:

"(D) CAPITAL GAIN RATE DIFFERENTIAL.—There is a capital gain rate differential for any taxable year if any rate of tax imposed by section 11, 511, or 831(a) or (b) (whichever applies) exceeds the alternative rate of tax under section 1201(a) (determined without regard to the last sentence of section 11(b)(1)).

"(E) RATE DIFFERENTIAL PORTION.—The rate differential portion of foreign source net capital gain, net capital, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as—

"(i) the excess of the highest rate of tax specified in section 11(b)(1) over the alternative rate of tax under section 1201(a), bears to

"(ii) the highest rate of tax specified in section 11(b)(1)."

(14) Section 1402(i)(1) is amended to read as follows:

"(1) IN GENERAL.—In determining the net earnings from self-employment of any options dealer or commodities dealer—

"(A) notwithstanding subsection (a)(3)(A), there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

"(B) the deduction provided by section 1202 shall not apply."

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 1202. Deduction for capital gains."

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending on or after April 15, 1991.

(2) TREATMENT OF COLLECTIBLES.—

(A) IN GENERAL.—The amendment made by subsection (b) shall apply to taxable years beginning after April 15, 1991.

(B) SPECIAL RULE FOR 1991 TAXABLE YEAR.—In case of any taxable year which includes April 15, 1991, for purposes of section 1202 of the Internal Revenue Code of 1986 and section 1(h) of such Code, any gain or loss from the sale or exchange of a collectible (within the meaning of section 1222(12) of such Code) shall be treated as gain or loss from a sale or exchange occurring before such date.

**SEC. ____02. PREVENTION OF EXCESSIVE DEDUCTION.**

(a) GENERAL RULE.—Subsections (a) and (b) of section 1250 (relating to gain from disposition of certain depreciable realty) are amended to read as follows:

"(a) GENERAL RULE.—Except as otherwise provided in this section, if section 1250 property is disposed of, the lesser of—

"(1) the depreciation adjustments in respect of such property, or

"(2) the excess of—

"(A) the amount realized (or, in the case of a disposition other than a sale, exchange, or involuntary conversion, the fair market value of such property), over

"(B) the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

"(b) DEPRECIATION ADJUSTMENTS.—For purposes of this section, the term 'depreciation adjustments' means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185 (as in effect before its repeal by the Tax Reform Act of 1986), 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, or 193). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed."

(b) LIMITATION IN CASE OF INSTALLMENT SALES.—Subsection (i) of section 453 is amended—

(1) by striking "1250" the first place it appears and inserting "1250 (as in effect on the day before the date of the enactment of the Economic Growth and Jobs Creation Incentives Act of 1991", and

(2) by striking "1250" the second place it appears and inserting "1250 (as so in effect)".

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 1250(d)(4) is amended—

(A) by striking "additional depreciation" and inserting "amount of the depreciation adjustments", and

(B) by striking "ADDITIONAL DEPRECIATION" in the subparagraph heading and inserting "DEPRECIATION ADJUSTMENTS".

(2) Subparagraph (B) of section 1250(d)(6) is amended to read as follows:

"(B) DEPRECIATION ADJUSTMENTS.—In respect of any property described in subparagraph (A), the amount of the depreciation adjustments attributable to periods before the distribution by the partnership shall be—

"(i) the amount of gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

"(ii) the amount of such gain to which section 751(b) applied."

(3) Subparagraph (D) of section 1250(d)(8) is amended—

(A) by striking "additional depreciation" each place it appears and inserting "amount of the depreciation adjustments", and

(B) by striking "ADDITIONAL DEPRECIATION" in the subparagraph heading and inserting "DEPRECIATION ADJUSTMENTS".

(4) Paragraph (8) of section 1250(d) is amended by striking subparagraphs (E) and (F) and inserting the following:

"(E) ALLOCATION RULES.—For purposes of this paragraph, the amount of gain attributable to the section 1250 property disposed of shall be the net amount realized with respect to such property reduced by the greater of the adjusted basis of the section 1250 property disposed of, or the cost of the section 1250 property acquired, but shall not exceed the gain recognized in the transaction."

(5) Subsection (d) of section 1250 is amended by striking paragraph (10).

(6) Section 1250 is amended by striking subsections (e), (f), and (g) and by redesignating subsections (h) and (i) as subsections (e) and (f), respectively.

(7) Paragraph (5) of section 48(q) is amended to read as follows:

"(5) RECAPTURE OF REDUCTION.—For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation."

(8) Clause (i) of section 267(e)(5)(D) is amended by striking "section 1250(a)(1)(B)" and inserting "section 1250(a)(1)(B) (as in effect on the day before the date of the enactment of the Economic Growth Act of 1991)".

(9)(A) Subsection (a) of section 291 is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (1), (2), (3), and (4), respectively.

(B) Subsection (c) of section 291 is amended to read as follows:

"(c) SPECIAL RULE FOR POLLUTION CONTROL FACILITIES.—Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(4)."

(C) Section 291 is amended by striking subsection (d) and redesignating subsection (e) as subsection (d).

(D) Paragraph (2) of section 291(d) (as redesignated by subparagraph (C)) is hereby repealed.

(E) Subparagraph (A) of section 265(b)(3) is amended by striking "291(e)(1)(B)" and inserting "291(d)(1)(B)".

(F) Subsection (c) of section 1277 is amended by striking "291(e)(1)(B)(ii)" and inserting "291(d)(1)(B)(ii)".

(10) Subsection (d) of section 1017 is amended to read as follows:

"(d) RECAPTURE OF DEDUCTIONS.—For purposes of sections 1245 and 1250—

"(1) any property the basis of which is reduced under this section and which is neither section 1245 property nor section 1250 property shall be treated as section 1245 property, and

"(2) any reduction under this section shall be treated as a deduction allowed for depreciation."

(11) Paragraph (5) of section 7701(e) is amended by striking "(relating to low-income housing)" and inserting "(as in effect on the day before the date of the enactment of the Economic Growth and Dividend Act of 1991)."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions made on or after April 15, 1991, in taxable years ending on or after such date.

**Subtitle B—Inflation Adjustment for Investments**

**SEC. ____11. INDEXING OF CERTAIN INVESTMENTS AFTER APRIL 15, 1991 FOR PURPOSES OF DETERMINING GAIN.**

(a) IN GENERAL.—Part II of subchapter O of chapter 1 (relating to basis rules of general application) is amended by inserting after section 1021 the following new section:

**"SEC. 1022. INDEXING OF INVESTMENTS ACQUIRED AFTER APRIL 15, 1991 FOR PURPOSES OF DETERMINING GAIN.**

"(a) GENERAL RULE.—

"(1) INDEXED BASIS SUBSTITUTED FOR ADJUSTED BASIS.—Solely for purposes of determining gain on the sale or other disposition by an individual of an indexed asset which has been held for more than 1 year, the indexed basis of the asset shall be substituted for its adjusted basis.

"(2) SPECIAL RULE FOR RECAPTURE GAIN.—

"(A) IN GENERAL.—Paragraph (1) shall not apply for purposes of determining the amount of recapture gain on the sale or other disposition of an indexed asset, but the amount of any such recapture gain shall increase the adjusted basis of the asset for purposes of applying paragraph (1) to determine the amount of other gain on such sale or other disposition.

"(B) RECAPTURE GAIN.—For purposes of subparagraph (A), the term 'recapture gain' means any gain treated as ordinary income under section 1245, 1250, or 1254.

"(b) INDEXED ASSET.—

"(1) IN GENERAL.—For purposes of this section, the term 'indexed asset' means—

"(A) any stock in a corporation, and

"(B) any tangible property (or any interest therein),

which is a capital asset or property used in the trade or business (as defined in section 1231(B)) and the holding period of which begins after April 15, 1991.

"(2) CERTAIN PROPERTY EXCLUDED.—For purposes of this section, the term 'indexed asset' does not include—

"(A) CREDITOR'S INTEREST.—Any interest in property which is in the nature of a creditor's interest.

"(B) COLLECTIBLES.—Any collectible (as defined in section 408(m)(2) without regard to section 408(m)(3)).

"(C) OPTIONS.—Any option or other right to acquire an interest in property.

"(D) NET LEASE PROPERTY.—In the case of a lessor, net lease property (within the meaning of subsection (i)(3)).

"(E) CERTAIN PREFERRED STOCK.—Stock which is fixed and preferred as to dividends and does not participate in corporate growth to any significant extent.

"(F) STOCK IN FOREIGN CORPORATIONS.—Stock in a foreign corporation.

"(G) STOCK IN S CORPORATIONS.—Stock in an S corporation.

"(3) EXCEPTION FOR STOCK IN FOREIGN CORPORATION WHICH IS REGULARLY TRADED ON NATIONAL OR REGIONAL EXCHANGE.—Paragraph (2)(F) shall not apply to stock in a foreign corporation the stock of which is listed on the New York Stock Exchange, the American Stock Exchange, or any domestic regional exchange for which quotations are published on a regular basis or is authorized for trading on the national market system operated by the National Association of Securities Dealers other than—

"(A) stock of a foreign investment company (within the meaning of section 1246(b)),

"(B) stock in a passive foreign investment company (as defined in section 1296), and

"(C) stock in a foreign corporation held by a United States person who meets the requirements of section 1248(a)(2).

"(c) INDEXED BASIS.—For purposes of this section—

"(1) INDEXED BASIS.—The indexed basis for any asset is—

"(A) the adjusted basis of the asset, multiplied by

"(B) the applicable inflation ratio.

"(2) APPLICABLE INFLATION RATIO.—The applicable inflation ratio for any asset shall be determined by dividing—

"(A) the CPI for the calendar year preceding the calendar year in which the disposition takes place, by

"(B) the CPI for the calendar year preceding the calendar year in which the taxpayer's holding period for such asset began.

The applicable inflation ratio shall not be taken into account unless it is greater than 1. The applicable inflation ratio for any asset shall be rounded to the nearest one-hundredth.

"(3) CONVENTIONS.—For purposes of paragraph (2), if any asset is disposed of during any calendar year—

"(A) such disposition shall be treated as occurring on the last day of such calendar year, and

"(B) the taxpayer's holding period for such asset shall be treated as beginning in the same calendar year as would be determined for an asset actually disposed of on such last day with a holding period of the same length as the actual holding period of the asset involved.

"(4) CPI.—For purposes of this subsection, the CPI for any calendar year shall be determined under section 1(f)(4).

"(d) SHORT SALES.—

"(1) IN GENERAL.—In the case of a short sale of an indexed asset with a short sale period in excess of 1 year, for purposes of this title, the amount realized shall be an amount equal to the amount realized (determined without regard to this paragraph) multiplied by the applicable inflation ratio. In applying subsection (c)(2) for purposes of the preceding sentence, the date on which the property is sold short shall be treated as the date on which the holding period for the asset begins and the closing date for the sale shall be treated as the date of disposition.

"(2) SHORT SALE OF SUBSTANTIALLY IDENTICAL PROPERTY.—If the taxpayer or the taxpayer's spouse sells short property substantially identical to an asset held by the taxpayer, the asset held by the taxpayer and the substantially identical property shall not be treated as indexed assets for the short sale period.

"(3) SHORT SALE PERIOD.—For purposes of this subsection, the short sale period begins on the day after property is sold and ends on the closing date for the sale.

"(e) TREATMENT OF REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

"(1) ADJUSTMENTS AT ENTITY LEVEL.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the adjustment under subsection (a) shall be allowed to any qualified investment entity (including for purposes of determining the earnings and profits of such entity).

"(B) EXCEPTION FOR CORPORATE SHAREHOLDERS.—Under regulations in the case of a distribution by a qualified investment entity (directly or indirectly) to a corporation—

"(i) the determination of whether such distribution is a dividend shall be made without regard to this section, and

"(ii) the amount treated as gain by reason of the receipt of any capital gain dividend shall be increased by the percentage by which the entity's net capital gain for the taxable year determined without regard to this section exceeds the entity's net capital gain for such year determined with regard to this section.

For purposes of the preceding sentence, any amount includible in gross income under section 852(b)(3)(D) shall be treated as a capital gain dividend and an S corporation shall not be treated as a corporation.

"(C) EXCEPTION FOR QUALIFICATION PURPOSES.—This section shall not apply for purposes of sections 851(b) and 856(c).

"(D) EXCEPTION FOR CERTAIN TAXES IMPOSED AT ENTITY LEVEL.—

"(i) TAX ON FAILURE TO DISTRIBUTE ENTIRE GAIN.—If any amount is subject to tax under section 852(b)(3)(A) for any taxable year, the amount on which tax is imposed under such section shall be increased by the percentage determined under subparagraph (B)(ii). A similar rule shall apply in the case of any amount subject to tax under paragraph (2) or (3) of section 857(b) to the extent attributable to the excess of the net capital gain over the deduction for dividends paid determined with reference to capital gain dividends only. The first sentence of this clause shall not apply to so much of the amount subject to tax under section 852(b)(3)(A) as is designated by the company under section 852(b)(3)(D).

"(ii) OTHER TAXES.—This section shall not apply for purposes of determining the amount of any tax imposed by paragraph (4), (5), or (6) of section 857(b).

"(2) ADJUSTMENTS TO INTERESTS HELD IN ENTITY.—

"(A) IN GENERAL.—Stock in a qualified investment entity shall be an indexed asset for any calendar month in the same ratio as the fair market value of the assets held by such entity at the close of such month which are indexed assets bears to the fair market value of all assets of such entity at the close of such month.

"(B) RATIO OF 90 PERCENT OR MORE.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 90 percent or more, such ratio for such month shall be 100 percent.

"(C) RATIO OF 10 PERCENT OR LESS.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 10 percent or less, such ratio for such month shall be zero.

"(D) VALUATION OF ASSETS IN CASE OF REAL ESTATE INVESTMENT TRUSTS.—Nothing in this paragraph shall require a real estate investment trust to value its assets more frequently than once each 36 months (except where such trust ceases to exist). The ratio

under subparagraph (A) for any calendar month for which there is no valuation shall be the trustee's good faith judgment as to such valuation.

"(3) QUALIFIED INVESTMENT ENTITY.—For purposes of this subsection, the term 'qualified investment entity' means—

"(A) a regulated investment company (within the meaning of section 851), and

"(B) a real estate investment trust (within the meaning of section 856).

"(f) OTHER PASS-THRU ENTITIES.—

"(1) PARTNERSHIPS.—

"(A) IN GENERAL.—In the case of a partnership, the adjustment made under subsection (a) at the partnership level shall be passed through to the partners (but only for purposes of determining the income of partners who are individuals).

"(B) SPECIAL RULE IN THE CASE OF SECTION 754 ELECTIONS.—In the case of a transfer of an interest in a partnership with respect to which the election provided in section 754 is in effect—

"(i) the adjustment under section 743(b)(1) shall, with respect to the transferor partner, be treated as a sale of the partnership assets for purposes of applying this section, and

"(ii) with respect to the transferee partner, the partnership's holding period for purposes of this section in such assets shall be treated as beginning on the date of such adjustment.

"(2) S CORPORATIONS.—In the case of an S corporation, the adjustment made under subsection (a) at the corporate level shall be passed through to the shareholders. This section shall not apply for purposes of determining the amount of any tax imposed by section 1374 or 1375.

"(3) COMMON TRUST FUNDS.—In the case of a common trust fund, the adjustment made under subsection (a) at the trust level shall be passed through to the participants (but only for purposes of determining the income of participants who are individuals).

"(g) DISPOSITIONS BETWEEN RELATED PERSONS.—This section shall not apply to any sale or other disposition of property between related persons (within the meaning of section 465(b)(3)(C)) if such property, in the hands of the transferee, is of a character subject to the allowance for depreciation provided in section 167.

"(h) SPECIAL RULES.—For purposes of this section—

"(1) TREATMENT AS SEPARATE ASSET.—In the case of any asset, the following shall be treated as a separate asset:

"(A) A substantial improvement to property.

"(B) In the case of stock of a corporation, a substantial contribution to capital.

"(2) ASSETS WHICH ARE NOT INDEXED ASSETS THROUGHOUT HOLDING PERIOD.—The applicable inflation ratio shall be appropriately reduced for periods during which the asset was not an indexed asset.

"(3) NET LEASE PROPERTY DEFINED.—The term 'net lease property' means leased property where—

"(A) the term of the lease (taking into account options to renew) was 50 percent or more of the useful life of the property, and

"(B) for the period of the lease, the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) is 15 percent or less of the rental income produced by such property."

(b) GAINS AND LOSSES FROM INDEXED ASSETS NOT TAKEN INTO ACCOUNT UNDER LIMITATION ON INVESTMENT INTEREST.—Subparagraph (B) of section 163(d)(4) (defining investment income) is amended by adding at the end thereof the following new sentences:

"Gain from the sale or other disposition of an indexed asset (as defined in section 1022) held for more than 1 year shall not be taken into account for purposes of the preceding sentence. The preceding sentence shall not apply to gain from the sale or other disposition of any such asset if the taxpayer elects to waive the benefits of section 1022 in determining the amount of such gain."

(c) CLERICAL AMENDMENT.—The table of sections for part II of subchapter O of chapter 1 is amended by inserting after the item relating to section 1021 the following new item:

"Sec. 1022. Indexing of investments acquired after April 15, 1990 for purposes of determining gain."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to dispositions of any property the holding period of which begins after April 15, 1991.

(2) EXCEPTION FOR CERTAIN TRANSACTIONS BETWEEN RELATED PERSONS.—The amendments made by subsections (a) and (b) shall not apply to any property acquired after April 15, 1991, from a related person (as defined in section 465(b)(3)(C) of the Internal Revenue Code of 1986) if—

(A) such property was so acquired for a price less than the property's fair market value, and

(B) the amendments made by this section did not apply to such property in the hands of such related person.

**SEC. ____. EMERGENCY DESIGNATION.**

(a) EMERGENCY DESIGNATION.—Pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Congress hereby designates all direct spending amounts and receipts legislation provided by this title (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EFFECTIVENESS.—Notwithstanding any other provision of law or any other provision of this Act (including section 10), none of the preceeding sections of this Act shall take effect unless the President submits to the Congress a written designation of all direct spending amounts and receipts legislation provided by this Act (for all fiscal years) and all appropriations authorized by this act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

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AMENDMENT NO. 1011

At the appropriate place, insert the following new title:

**TITLE _____—ENTERPRISE ZONES**

**Subtitle A—Designation**

**SEC. ____01. DESIGNATION OF ZONES.**

(a) GENERAL RULE.—Chapter 80 (relating to general rules) is amended by adding at the end thereof the following new subchapter:

**"Subchapter D—Designation of Enterprise Zones**

"Sec. 7880. Designation.

**"SEC. 7880. DESIGNATION.**

"(a) DESIGNATION OF ZONES.—

"(1) DEFINITION.—For purposes of this title, the term 'enterprise zone' means any area—

"(A) which is nominated by one or more local governments and the State or States in which it is located for designation as an enterprise zone (hereinafter in this section referred to as a 'nominated area'), and

"(B) which the Secretary of Housing and Urban Development, after consultation with—

"(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury; the Director of the Office of Management and Budget; and the Administrator of the Small Business Administration, and

"(ii) in the case of an area on an Indian reservation, the Secretary of the Interior, designates as an enterprise zone.

"(2) AUTHORITY TO DESIGNATE.—The Secretary of Housing and Urban Development is authorized to designate enterprise zones in accordance with the provisions of this section.

"(3) LIMITATIONS ON DESIGNATIONS.—

"(A) PUBLICATION OF REGULATIONS.—Before designating any area as an enterprise zone and not later than 4 months following the date of the enactment of this section, the Secretary of Housing and Urban Development shall prescribe by regulation, after consultation with the officials described in paragraph (1)(B)—

"(i) the procedures for nominating an area, and

"(ii) the procedures for designation as an enterprise zone, including a method for comparing courses of action under subsection (d) proposed for nominated areas, and the other factors specified in subsection (e).

"(B) TIME LIMITATIONS.—The Secretary of Housing and Urban Development shall designate nominated areas as enterprise zones only during the 48-month period beginning on the later of—

"(i) the first day of the first month following the month in which the effective date of the regulations described in subparagraph (A) occurs, or

"(ii) June 30, 1991.

"(C) NUMBER OF DESIGNATIONS.—

"(i) IN GENERAL.—The Secretary of Housing and Urban development may designate—

"(I) not more than 50 nominated areas as enterprise zones under this section and

"(II) not more than 15 nominated areas as enterprise zones during the first 12-month period beginning on the date determined under subparagraph (B), not more than 30 by the end of the second 12-month period, not more than 45 by the end of the third 12-month period, and not more than 50 by the end of the fourth 12-month period.

"(ii) MINIMUM DESIGNATION IN RURAL AREAS.—Of the areas designated as enterprise zones, at least one-third must be areas that are—

"(I) within a local government jurisdiction or jurisdictions with a population of less than 50,000 (as determined using the most recent census data available);

"(II) outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)); or

"(III) determined by the Secretary of Housing and Urban Development, after consultation with the Secretary of Commerce, to be rural areas.

"(D) PROCEDURAL RULES.—The Secretary of Housing and Urban Development shall not make any designations under this section unless—

"(i) the local government and the State in which the nominated area is located have the authority to—

"(I) nominate such area for designation as an enterprise zone,

"(II) make the State and local commitments under subsection (d), and

"(III) provide assurances satisfactory to the Secretary of Housing and Urban develop-

ment that such commitments will be fulfilled, and

"(ii) a nomination therefor is submitted by such State and local governments in such a manner and in such form, and contains such information, as the Secretary of Housing and Urban Development shall prescribe by regulation.

"(4) NOMINATION PROCESS FOR INDIAN RESERVATIONS.—In the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) shall be deemed to be both the State and local governments with respect to such area.

"(b) TIME PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—

"(1) IN GENERAL.—Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

"(A) December 31 of the 24th calendar year following the calendar year in which such date occurs,

"(B) the termination date specified by the State and local governments as provided in the nomination submitted in accordance with subsection (a)(3)(D)(ii),

"(C) such other date as the Secretary of Housing and Urban Development shall specify as a condition of designation, or

"(D) the date upon which the Secretary of Housing and Urban Development revokes such designation.

"(2) REVOCATION OF DESIGNATION.—The Secretary of Housing and Urban Development, after consultation with the officials described in subsection (a)(1)(B), may revoke the designation of an area if the Secretary of Housing and Urban Development determines that the State or a local government in which the area is located is not complying substantially with the agreed course of action for the area.

"(c) AREA AND ELIGIBILITY REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary of Housing and Urban Development may designate a nominated area as an enterprise zone only if it meets the requirements of paragraphs (2) and (3).

"(2) AREA REQUIREMENTS.—A nominated area meets the requirements of this paragraph if—

"(A) the area is within the jurisdiction of the local government;

"(B) the boundary of the area is continuous; and

"(C) the area—

"(i) has a population, as determined by the most recent census data available, of not less than—

"(I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(3)(C)(ii)) is located within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) with a population of 50,000 or more; or

"(II) 1,000 in any other case; or

"(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

"(3) ELIGIBILITY REQUIREMENTS.—For purposes of paragraph (1), a nominated area meets the requirements of this paragraph if the State or local governments in which the nominated area is located certifies, and the Secretary of Housing and Urban Development accepts such certification, that—

"(A) the area is one of pervasive poverty, unemployment and general distress;

"(B) the area is located wholly within the jurisdiction of a local government that is eligible for Federal assistance under section 119 of the Housing and Community Development Act of 1974, as in effect on the date of the enactment of this Act;

"(C) the unemployment rate for the area, as determined by the appropriate available data, was not less than 1.5 times the national unemployment rate for the period;

"(D) the poverty rate (as determined by the most recent census data available) for each populous census tract (or where not tracted, the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas) within the area was not less than 20 percent for the period to which such data relate; and

"(E) the area meets at least one of the following criteria:

"(i) Not less than 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the local government (determined in the same manner as under section 119(b)(2) of the Housing and Community Development Act of 1974).

"(ii) The population of the area decreased by 20 percent or more between 1970 and 1980 (as determined from the most recent census available).

"(4) ELIGIBILITY REQUIREMENTS FOR RURAL AREAS.—For purposes of paragraph (1), a nominated area that is a rural area described in subsection (a)(3)(C)(ii) meets the requirements of paragraph (3) if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that the area meets—

"(A) the criteria set forth in subparagraphs (A) and (B) of paragraph (3); and

"(B) not less than one of the criteria set forth in the other subparagraphs of paragraph (3).

"(d) REQUIRED STATE AND LOCAL COMMITMENTS.—

"(1) IN GENERAL.—No nominated area shall be designated as an enterprise zone unless the State and the local government or governments of the jurisdictions in which the nominated area is located agree in writing that, during any period during which the nominated area is an enterprise zone, such governments will follow a specified course of action designed to reduce the various burdens borne by employers or employees in such area.

"(2) COURSE OF ACTION.—The course of action under paragraph (1) may include, but is not limited to—

"(A) the reduction or elimination of tax rates or fees applying within the enterprise zone,

"(B) actions to reduce, remove, simplify, or streamline governmental requirements applying within the enterprise zone,

"(C) an increase in the level or efficiency of local services within the enterprise zone, for example, crime prevention, and drug enforcement prevention and treatment,

"(D) involvement in the program by private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a commitment from such private entities to provide jobs and job training for, and technical, financial or other assistance to, employers, employees, and residents of the nominated area,

"(E) mechanisms to increase equity ownership by residents and employees within the enterprise zone,

"(F) donation (or sale below market value) of land and buildings to benefit low and moderate income people,

"(G) linkages to—

"(i) job training,

"(ii) transportation,

"(iii) education,

"(iv) day care,

"(v) health care, and

"(vi) other social service support,

"(H) provision of supporting public facilities, and infrastructure improvements,

"(I) encouragement of local entrepreneurship; and

"(J) other factors determined essential to support enterprise zone activities and encourage livability or quality of life.

"(3) LATER MODIFICATION OF A COURSE OF ACTION.—The Secretary of Housing and Urban Development may by regulation prescribe procedures to permit or require a course of action to be updated or modified during the time that a designation is in effect.

"(e) PRIORITY OF DESIGNATION.—In choosing nominated areas for designation, the Secretary of Housing and Urban Development shall give preference to the nominated areas—

"(1) with respect to which the strongest and highest quality contributions have been promised as part of the course of action, taking into consideration the fiscal ability of the nominating State and local governments to provide tax relief,

"(2) with respect to which the nominating State and local governments have provided the most effective and enforceable guarantees that the proposed course of action will actually be carried out during the period of the enterprise zone designation,

"(3) with respect to which private entities have made the most substantial commitments in additional resources and contributions, including the creation of new or expanded business activities, and

"(4) which best exhibit such other factors determined by the Secretary of Housing and Urban Development, including relative distress, as are consistent with the intent of the enterprise zone program and have the greatest likelihood of success.

"(f) GEOGRAPHIC DISTRIBUTION.—In making designations, the Secretary of Housing and Urban Development will take into consideration a reasonable geographic distribution of enterprise zones.

"(g) DEFINITIONS.—For the purposes of this title—

"(1) GOVERNMENTS.—If more than one government seeks to nominate an area as an enterprise zone, any reference to, or requirement of, this section shall apply to all such governments.

"(2) STATE.—The term 'State' shall also include Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other possession of the United States.

"(3) LOCAL GOVERNMENT.—The term 'local government' means—

"(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State,

"(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary of Housing and Urban Development, and

"(C) the District of Columbia.".

"(h) CROSS REFERENCES FOR—

**"(1) definitions, see section 1391,**

**"(2) treatment of employees in enterprise zones, see section 1392, and**

**"(3) treatment of investments in enterprise zones, see sections 1393 and 1394.".**

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 80 is amended by

adding at the end thereof the following new item:

"SUBCHAPTER D. Designation of enterprise zones.".

**SEC. ____02. REPORTING REQUIREMENTS.**

Not later than the close of the second calendar year after the calendar year in which the Secretary of Housing and Urban Development first designates areas as enterprise zones, and at the close of each second calendar year thereafter, the Secretary of Housing and Urban Development shall submit to the Congress a report on the effects of such designation in accomplishing the purposes of this Act.

**SEC. ____03. INTERACTION WITH OTHER FEDERAL PROGRAMS.**

(a) COORDINATION WITH RELOCATION ASSISTANCE.—The designation of an enterprise zone under section 7880 of the Internal Revenue Code of 1986 (as added by this Act) shall not—

(1) constitute approval of a Federal or federally assisted program or project (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601)); or

(2) entitle any person displaced from real property located in such zone to any rights or any benefits under such Act.

(b) COORDINATION WITH ENVIRONMENTAL POLICY.—Designation of an enterprise zone under section 7880 of such Code shall not constitute a Federal action for purposes of applying the procedural requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4341) or other provisions of Federal law relating to the protection of the environment.

**Subtitle B—Federal Income Tax Incentives**

**SEC. ____11. DEFINITIONS AND REGULATIONS; EMPLOYEE CREDIT; CAPITAL GAIN EXCLUSION; STOCK EXPENSING.**

(a) GENERAL RULE.—Chapter 1 (relating to normal tax and surtax rules) is amended by inserting after subchapter T the following new subchapter:

**"Subchapter U—Enterprise Zones**

"Sec. 1391. Definitions and regulatory authority.

"Sec. 1392. Credit for enterprise zone employees.

"Sec. 1393. Enterprise zone capital gain.

"Sec. 1394. Enterprise zone stock.

**"SEC. 1391. DEFINITIONS AND REGULATORY AUTHORITY.**

"(a) ENTERPRISE ZONE.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'enterprise zone' means any area which the Secretary of Housing and Urban Development designates pursuant to section 7880(a) as a Federal enterprise zone for purposes of this title.

"(2) TERMINATION OF ENTERPRISE ZONE.—An area will cease to constitute an enterprise zone once its designation as such terminates or is revoked under section 7880(b).

"(b) ENTERPRISE ZONE BUSINESS.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'enterprise zone business' means an activity constituting the active conduct of a trade or business within an enterprise zone, and with respect to which—

"(A) at least 80 percent of the gross income in each calendar year is attributable to the active conduct of a trade or business within an enterprise zone,

"(B) less than 10 percent of the property (as measured by unadjusted basis) constitutes stocks, securities, or property held for use by customers,

"(C) no more than an insubstantial portion of the property constitutes collectibles (as defined in section 408(m)(2)), unless such collectibles constitute property held primarily for sale to customers in the ordinary course of the active trade or business,

"(D) substantially all of the property (whether owned or leased) is located within an enterprise zone, and

"(E) substantially all of the employees work within an enterprise zone.

"(2) RELATED ACTIVITIES TAKEN INTO ACCOUNT.—Except as otherwise provided in regulations, all activities conducted by a taxpayer and persons related to the taxpayer shall be treated as one activity for purposes of paragraph (1).

"(3) SPECIAL RULES.—

"(A) RENTAL REAL PROPERTY.—For purposes of paragraph (1), real property located within an enterprise zone and held for use by customers other than related persons shall be treated as the active conduct of a trade or business for purposes of paragraph (1)(A) and as not subject to paragraph (1)(B).

"(B) TERMINATION OF ENTERPRISE ZONE BUSINESS.—An activity shall cease to be an enterprise zone business if—

"(i) the designation of the enterprise zone in which the activity is conducted terminates or is revoked pursuant to section 7880(b);

"(ii) more than 50 percent (by value) of the activity's property or services are obtained from related persons other than enterprise zone businesses; or

"(iii) more than 50 percent of the activity's gross income is attributable to property or services provided to related persons other than enterprise zone businesses.

"(c) ENTERPRISE ZONE PROPERTY.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'enterprise zone property' means—

"(A) any tangible personal property located in an enterprise zone and used by the taxpayer in an enterprise zone business, and

"(B) any real property located in an enterprise zone and used by the taxpayer in an enterprise zone business.

In no event shall any financial property or intangible interest in property be treated as constituting enterprise zone property, whether or not such property is used in the active conduct of an enterprise zone business.

"(2) TERMINATION OF ENTERPRISE ZONE.—The treatment of property as enterprise zone property under subparagraph (A) shall not terminate upon the termination or revocation of the designation of the enterprise zone in which the property is located, but instead shall terminate immediately after the first sale or exchange of such property occurring after the expiration or revocation.

"(d) RELATED PERSONS.—For purposes of this subchapter, a person shall be treated as related to another person if—

"(1) the relationship of such persons is described in section 267(b) or 707(b)(1), or

"(2) such persons are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

For purposes of paragraph (1), in applying section 267(b) or 707(b)(1), '33 percent' shall be substituted for '50 percent'.

"(e) REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subtitle C of title II of the Economic Growth Act of 1991, including—

"(1) providing that Federal tax relief is unavailable to an activity that does not stimulate employment in, or revitalization of, enterprise zones,

"(2) providing for appropriate coordination with other Federal programs that, in combination, might enable activity within enterprise zones to be more than 100 percent subsidized by the Federal Government, and

"(3) preventing the avoidance of the rules in this subchapter.

**"SEC. 1392. CREDIT FOR ENTERPRISE ZONE EMPLOYEES.**

"(a) GENERAL RULE.—In the case of a taxpayer who is an enterprise zone employee, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 5 percent of so much of the qualified wages of the taxpayer for the taxable year as does not exceed $10,500.

"(b) DEFINITIONS.—For purposes of this section—

"(1) ENTERPRISE ZONE EMPLOYEE.—The term 'enterprise zone employee' means an individual—

"(A) performing services during the taxable year that are directly related to the conduct of an enterprise zone business,

"(B) substantially all of the services described in paragraph (1)(A) are performed within an enterprise zone, and

"(C) the employer for whom the services described in paragraph (1)(A) are performed is not the Federal government, any State government or subdivision thereof, or any local government.

"(2) WAGES.—The term 'wages' has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such subsection).

"(3) QUALIFIED WAGES.—The term 'qualified wages' means all wages of the taxpayer, to the extent attributable to services described in paragraph (1).

"(c) LIMITATIONS.—

"(1) PHASE-OUT OF CREDIT.—The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

"(A) $525, over

"(B) 10.5 percent of so much of the taxpayer's total wages (whether or not constituting qualified wages) as exceeds $20,000.

"(2) PARTIAL TAXABLE YEAR.—If designation of an area as an enterprise zone occurs, expires, or is revoked pursuant to section 7880 on a date other than the first or last day of the taxable year of the taxpayer, or in the case of a short taxable year, the limitations specified in subsection (c)(1) shall be adjusted on a pro rata basis (based upon the number of days).

"(d) REDUCTION OF CREDIT TO TAXPAYERS SUBJECT TO ALTERNATIVE MINIMUM TAX.—The credit allowed under this section for the taxable year shall be reduced by the amount (if any) of tax imposed by section 55 (relating to the alternative minimum tax) with respect to such taxpayer for such year.

"(e) CREDIT TREATED AS SUBPART C CREDIT.—For purposes of this title, the credit allowed under subsection (a) shall be treated as a credit allowed under subpart C of part IV of subchapter A of this chapter.

**"SEC. 1393. ENTERPRISE ZONE CAPITAL GAIN.**

"(a) GENERAL RULE.—Gross income does not include the amount of any gain constituting enterprise zone capital gain.

"(b) DEFINITION.—For purposes of this section—

"(1) IN GENERAL.—The term 'enterprise zone capital gain' means gain—

"(A) treated as long-term capital gain,

"(B) allocable in accordance with the rules under subsection (b)(5) of section 338 to the sale or exchange of enterprise zone property, and

"(C) properly attributable to periods of use in an enterprise zone business.

"(2) LIMITATIONS.—Enterprise zone capital gain does not include any gain attributable to—

"(A) the sale or exchange of property not constituting enterprise zone property with respect to the taxpayer throughout the period of twenty-four full calendar months immediately preceding the sale or exchange,

"(B) any collectibles (as defined in section 408(m)), or

"(C) sales or exchanges to persons controlled by the same interests.

"(c) BASIS.—Amounts excluded from gross income pursuant to subsection (a) shall not be applied in reduction to the basis of any property held by the taxpayer.

**"SEC. 1394. ENTERPRISE ZONE STOCK.**

"(a) GENERAL RULE.—At the election of any individual, the aggregate amount paid by such taxpayer during the taxable year for the purchase of enterprise zone stock on the original issue of such stock by a qualified issuer shall be allowed as a deduction.

"(b) LIMITATIONS.—

"(1) CEILING.—The maximum amount allowed as a deduction under subsection (a) to a taxpayer shall not exceed $50,000 for any taxable year, nor $250,000 during the taxpayer's lifetime.

"(A) EXCESS AMOUNTS.—If the amount otherwise deductible by any person under subsection (a) exceeds the limitation under this paragraph (1)—

"(i) the amount of such excess shall be treated as an amount paid in the next taxable year, and

"(ii) the deduction allowed for any taxable year shall be allocated among the enterprise zone stock purchased by such person in accordance with the purchase price per share.

"(2) RELATED PERSON.—

"(A) IN GENERAL.—The taxpayer and all individuals related to the taxpayer shall be treated as one person for purposes of the limitations described in subsection (b)(1).

"(B) EXCESS AMOUNTS.—The limitations described in subsection (b)(1) shall be allocated among the taxpayer and related persons in accordance with their respective purchases of enterprise zone stock.

"(3) PARTIAL TAXABLE YEAR.—If designation of an area as an enterprise zone occurs, expires, or is revoked pursuant to section 7880 on a date other than the first or last day of the taxable year of the taxpayer, or in the case of a short taxable year, the limitations specified in subsection (b)(1) shall be adjusted on a pro rata basis (based upon the number of days).

"(c) DISPOSITIONS OF STOCK.—

"(1) GAIN TREATED AS ORDINARY INCOME.—Except as otherwise provided in regulations, if a taxpayer disposes of any enterprise zone stock with respect to which a deduction was allowed under subsection (a), the amount realized upon such disposition shall be treated as ordinary income and recognized notwithstanding any other provision of this subtitle.

"(2) INTEREST CHARGED IF DISPOSITION WITHIN 5 YEARS OF PURCHASE.—

"(A) IN GENERAL.—If a taxpayer disposes of any enterprise zone stock before the end of the 5-year period beginning on the date such stock was purchased by the taxpayer, the tax imposed by this chapter for the taxable year in which such disposition occurs shall be increased by the amount determined under subparagraph (B).

"(B) ADDITIONAL AMOUNT.—For purposes of subparagraph (A), the additional amount shall be equal to the amount of interest (determined at the rate applicable under section 6621(a)(2)) that would accrue—

"(i) during the period beginning on the date the stock was purchased by the taxpayer and ending on the date such stock was disposed of by the taxpayer,

"(ii) on an amount equal to the aggregate decrease in tax of the taxpayer resulting from the deduction allowed under this subsection (a) with respect to the stock so disposed of.

"(d) DISQUALIFICATION.—

"(1) ISSUER OR STOCK CEASES TO QUALIFY.—If a taxpayer elects the deduction under subsection (a) with respect to enterprise zone stock, and either—

"(A) the issuer with respect to which the election was made ceases to be a qualified issuer, or

"(B) the proceeds from the issuance of the taxpayer's enterprise zone stock fail or otherwise cease to be invested by the issuer in enterprise zone property, then, notwithstanding any provision of this subtitle other than paragraph (2) to the contrary, the taxpayer shall recognize as ordinary income the amount of the deduction allowed under subsection (a) with respect to the issuer's enterprise zone stock.

"(2) SPECIAL RULES.—

"(A) LIQUIDATION.—Where enterprise zone property acquired with proceeds from the issuance of enterprise zone stock is sold or exchanged pursuant to a plan of complete liquidation, the treatment described in paragraph (1) shall be inapplicable.

"(B) TERMINATION OF ENTERPRISE ZONE.—The treatment of an activity as an enterprise zone business shall not cease for purposes of paragraph (1) solely by reason of the termination or revocation of the designation of the enterprise zone with respect to the activity.

"(C) PARTIAL DISQUALIFICATION.—Where some, but not all, of the property acquired by the issuer with the proceeds of enterprise zone stock ceases to constitute enterprise zone property, the treatment described in paragraph (1) shall be modified as follows—

"(i) the total amount recognized as ordinary income by all shareholders of the issuer shall be limited to an amount of deduction allowed up to the unadjusted basis of property ceasing to constitute enterprise zone property,

"(ii) the amount recognized shall be allocated among enterprise zone stock with respect to which the election in subsection (a) was made in the reverse order in which such stock was issued, and

"(iii) the amount recognized shall be apportioned among taxpayers having made the election in subsection (a) in the ratios in which the stock described in paragraph (2)(C)(ii) was purchased.

"(3) ADDITIONAL AMOUNT.—If income is recognized pursuant to paragraph (1) at any time before the close of the 5th calendar year ending after the date the enterprise zone stock was purchased, the tax imposed by this chapter with respect to such income shall be increased by an amount equal to the amount of interest (determined at the rate applicable under section 6621(a)(2)) that would accrue—

"(A) during the period beginning on the date the stock was purchased by the taxpayer and ending on the date of the disqualification event described in paragraph (1),

"(B) on an amount equal to the aggregate decrease in tax of the taxpayer resulting from the deduction allowed under this subsection (a) with respect to the stock so disqualified.

"(e) DEFINITIONS.—For purposes of this section—

"(1) ENTERPRISE ZONE STOCK.—The term 'enterprise zone stock' means common stock issued by a qualified issuer, but only to the extent that the amount of proceeds of such issuance are used by such issuer no later than twelve months followed issuance to acquire and maintain an equal amount of newly acquired enterprise zone property.

"(2) QUALIFIED ISSUER.—

"(A) IN GENERAL.—The term 'qualified issuer' means any subchapter C corporation which—

"(i) does not have more than one class of stock,

"(ii) is engaged solely in the conduct of one or more enterprise zone businesses,

"(iii) does not own or lease more than $5 million of total property (including money), as measured by the unadjusted basis of the property, and

"(iv) more than 20 percent of the total voting power and 20 percent of the total value of the stock of such corporation is owned by individuals, partnerships, estates or trusts.

"(B) LIMITATION ON TOTAL ISSUANCES.—A qualified issuer may issue no more than an aggregate of $5 million of enterprise zone stock.

"(C) AGGREGATION.—For purposes of applying the limitations under paragraph (2), the issuer and all related persons shall be treated as one person.

"(3) AMOUNT PAID.—For purposes of subsection (a), the amount 'paid' by a taxpayer for any taxable year shall not include the issuance of evidences of indebtedness of the taxpayer (whether or not such indebtedness is guaranteed by another person), nor amounts paid by the taxpayer after the close of the taxable year.

"(f) ISSUANCES IN EXCHANGE FOR PROPERTY.—If enterprise zone stock is issued in exchange for property, then notwithstanding any provision of subchapter C of this chapter to the contrary—

"(1) the issuance shall be treated for purposes of this subtitle as the sale of the property at its then fair market value to the corporation, and a contribution to the corporation of the proceeds immediately thereafter in exchange for the enterprise zone stock, and

"(2) the issuer's basis for the property shall be equal to the fair market value of such property at the time of issuance.

"(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a taxpayer elects the deduction under subsection (a), the taxpayer's basis (without regard to this subsection) for the enterprise zone stock with respect to such election shall be reduced by the deduction allowed or allowable.

"(h) LIMITATIONS ON ASSESSMENT AND COLLECTION.—If a taxpayer elects the deduction under subsection (a) for any taxable year, then—

"(1) the period for assessment and collection of any deficiency attributable to any part of the deduction shall not expire before one year following expiration of such period of the qualified issuer that includes the circumstances giving rise to the deficiency, and

"(2) such deficiency may be assessed before expiration of the period described in paragraph (1) notwithstanding any provisions of this subtitle to the contrary.

"(i) CROSS REFERENCE.—

**For treatment of the deduction under subsection (a) for purposes of the alternative minimum tax, see section 56.".**

(b) TECHNICAL AMENDMENT.—Subsection (a) of section 1016 (relating to adjustments to basis) is amended by striking out "and" at the end of paragraph (23); by striking out the period at the end of paragraph (24) and inserting in lieu thereof "; and"; and by adding

at the end thereof the following new paragraph:

"(25) to the extent provided in section 1394(g), in the case of stock with respect to which a deduction was allowed or allowable under section 1394(a).".

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 1 is amended by inserting after the item relating to subchapter T the following new item:

"Subchapter U. Enterprise zones."

**SEC. ____12. ALTERNATIVE MINIMUM TAX.**

(a) CORPORATIONS.—Section 56(g)(4)(B) (relating to adjustments based on adjusted current earnings of corporations) is amended by adding the following new clause at the end thereof:

"(iii) EXCLUSION OF ENTERPRISE ZONE CAPITAL GAIN.—Clause (i) shall not apply in the case of any enterprise zone capital gain (as defined in section 1393(b)), and such gain shall not be included in income for purposes of computing alternative minimum taxable income.".

(b) INDIVIDUALS.—Section 56(b) (relating to adjustments to the alternative minimum taxable income of individuals) is amended by adding the following new paragraph at the end thereof:

"(4) ENTERPRISE ZONE STOCK.—No deduction shall be allowed for the purchase of enterprise zone stock (as defined in section 1394(e)).".

**SEC. ____13. ADJUSTED GROSS INCOME DEFINED.**

Section 62(a) (relating to the definition of adjusted gross income) is amended by inserting after paragraph (14) the following new paragraph:

"(15) ENTERPRISE ZONE STOCK.—The deduction allowed by section 1394.".

**SEC. ____14. EFFECTIVE DATE.**

The amendments made by this subtitle shall apply to taxable years ending after December 31, 1990.

**Subtitle C—Regulatory Flexibility**

**SEC. ____21. DEFINITION OF SMALL ENTITIES IN ENTERPRISE ZONE FOR PURPOSES OF ANALYSIS OF REGULATORY FUNCTIONS.**

Section 601 of title 5, United States Code, is amended by—

(1) striking out "and" at the end of paragraph (5); and

(2) striking out paragraph (6) and inserting in lieu thereof the following:

"(6) the term 'small entity' means—

"(A) a small business, small organization, or small governmental jurisdiction defined in paragraphs (3), (4), and (5) of this section, respectively; and

"(B) any qualified enterprise zone business; any unit of government that nominated an area which the Secretary of Housing and Urban Development designates as an enterprise zone (within the meaning of section 7880 of the Internal Revenue Code of 1986) that has a rule pertaining to the carrying out of any project, activity, or undertaking within such zone; and any not-for-profit enterprise carrying out a significant portion of its activities within such a zone; and

"(7) the term 'qualified enterprise zone business' means any person, corporation, or other entity—

"(A) which is engaged in the active conduct of a trade or business within an enterprise zone (within the meaning of section 7880 of the Internal Revenue Code of 1986); and

"(B) for whom at least 50 percent of its employees are qualified employees (within the meaning of section 1392(b)(1) of such Code).".

**SEC. ____22. WAIVER OR MODIFICATION OF AGENCY RULES IN ENTERPRISE ZONES.**

(a) Chapter 6 of title 5, United States Code, is amended by redesignating sections 611 and 612 as sections 612 and 613, respectively, and inserting the following new section immediately after section 610:

**"§611. Waiver or modification of agency rules in enterprise zones**

"(a) Upon the written request of any government which nominated an area that the Secretary of Housing and Urban Development has designated as an enterprise zone under section 7880 of the Internal Revenue Code of 1986, an agency is authorized, in order to further the job creation, community development, or economic revitalization objectives with respect to such zone, to waive or modify all or part of any rule which it has authority to promulgate, as such rule pertains to the carrying out of projects, activities, or undertakings within such zone.

"(b) Nothing in this section shall authorize an agency to waive or modify any rule adopted to carry out a statute or Executive order which prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, sex, familial status, national origin, age, or handicap.

"(c) A request under subsection (a) shall specify the rule or rules to be waived or modified and the change proposed, and shall briefly describe why the change would promote the achievement of the job creation, community development, or economic revitalization objectives of the enterprise zone. If such a request is made to any agency other than the Department of Housing and Urban Development, the requesting government shall send a copy of the request to the Secretary of Housing and Urban Development at the time the request is made.

"(d) In considering a request, the agency shall weigh the extent to which the proposed change is likely to further job creation, community development, or economic revitalization within the enterprise zone against the effect the change is likely to have on the underlying purposes of applicable statutes in the geographic area which would be affected by the change. The agency shall approve the request whenever it finds, in its discretion, that the public interest which the proposed change would serve in furthering such job creation, community development, or economic revitalization outweighs the public interest which continuation of the rule unchanged would serve. The agency shall not approve any request to waive or modify a rule if that waiver or modification would—

"(1) violate a statutory requirement (including any requirements of the Fair Labor Standards Act of 1938 (52 Stat. 1060; 29 U.S.C. 201 et seq.)); or

"(2) be likely to present a significant risk to the public health, including environmental or occupational health or safety, or of environmental pollution.

"(e) If a request is disapproved, the agency shall inform all the requesting governments, and the Department of Housing and Urban Development, in writing of the reasons therefor and shall, to the maximum extent possible, work with such governments to develop an alternative, consistent with the standards contained in subsection (d).

"(f) Agencies shall discharge their responsibilities under this section in an expeditious manner, and shall make a determination on requests not later than 90 days after their receipt.

"(g) A waiver or modification of a rule under subsection (a) shall not be considered to be a rule, rulemaking, or regulation under chapter 5 of this title. To facilitate reaching its decision on any requested waiver or modification, the agency may seek the views of interested parties and, if the views are to be sought, determine how they should be obtained and to what extent, if any, they should be taken into account in considering the request. The agency shall publish a notice in the Federal Register stating any waiver or modification of a rule under this section, the time such waiver or modification takes effect and its duration, and the scope of applicability of such waiver or modification.

"(h) In the event that an agency proposes to amend a rule for which a waiver or modification under this section is in effect, the agency shall not change the waiver or modification to impose additional requirements unless it determines, consistent with standards contained in subsection (d), that such action is necessary. Such determinations shall be published with the proposal to amend such rule.

"(i) No waiver or modification of a rule under this section shall remain in effect with respect to an enterprise zone after the enterprise zone designation has expired or has been revoked.

"(j) For purposes of this section, the term 'rule' means (1) any rule as defined in section 551(4) of this title or (2) any rulemaking conducted on the record after opportunity for an agency hearing pursuant to sections 556 and 557 of this title.".

(b) The analysis for chapter 6 of title 5, United States Code, is amended by redesignating the items relating to sections 611 and 612 as items relating to sections 612 and 613, respectively, and by inserting after the item relating to section 610 the following new item:

"611. Waiver or modification of agency rules in enterprise zones.".

(c) Section 601(2) of such title 5 is amended by inserting "(except for purposes of section 611" immediately before "means".

(d) Section 613 of such title 5, as redesignated by subsection (a), is amended—

(1) in subsection (a) by inserting "(except section 611)" immediately after "chapter"; and

(2) in subsection (b) by inserting "as defined in section 601(2)" immediately before the period at the end of the first sentence.

**SEC. ____23. FEDERAL AGENCY SUPPORT OF ENTERPRISE ZONES.**

In order to maximize all agencies' support of enterprise zones, the Secretary of Housing and Urban Development is authorized to convene regional and local coordinating councils of any appropriate agencies to assist State and local governments to achieve the objectives agreed to in the course of action under section 7880 of the Internal Revenue Code of 1986.

**Subsection D—Establishment of Foreign Trade Zones in Enterprise Zones**

**SEC. ____31. FOREIGN-TRADE ZONE PREFERENCES.**

(a) PREFERENCE IN ESTABLISHMENT OF FOREIGN-TRADE ZONES IN REVITALIZATION AREAS.—In processing applications for the establishment of foreign-trade zones pursuant to an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", approved June 18, 1934 (48 Stat. 998), the Foreign-Trade Zone Board shall consider on a priority basis and expedite, to the maximum

extent possible, the processing of any application involving the establishment of a foreign-trade zone within an enterprise zone designated pursuant to section 7880 of the Internal Revenue Code of 1986.

(b) APPLICATION PROCEDURE.—In processing applications for the establishment of ports of entry pursuant to "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and fifteen, and for other purposes", approved August 1, 1914 (38 Stat. 609), the Secretary of the Treasury shall consider on a priority basis and expedite, to the maximum extent possible, the processing of any application involving the establishment of a port of entry which is necessary to permit the establishment of a foreign-trade zone within an enterprise zone so designated.

(c) APPLICATION EVALUATION.—In evaluating applications for the establishment of foreign-trade zones and ports of entry in connection with enterprise zones so designated, the Foreign-Trade Zone Board and the Secretary of the Treasury shall approve the applications, to the maximum extent practicable, consistent with their respective statutory responsibilities.

**Subtitle D—Repeal of Title VII of the Housing and Community Development Act of 1987**

**SEC. ____41. REPEAL.**

Title VII of the Housing and Community Development Act of 1987 is hereby repealed.

**SEC. ____. EMERGENCY DESIGNATION.**

EMERGENCY DESIGNATION.—Pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Congress hereby designates all direct spending amounts and receipts legislation provided by this title (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EFFECTIVENESS.—Notwithstanding any other provision of law or any other provision of this Act (including section 10), none of the preceeding sections of this Act shall take effect unless the President submits to the Congress a written designation of all direct spending amounts and receipts legislation provided by this Act (for all fiscal years) and all appropriations authorized by this act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

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AMENDMENT NO. 1012

Strike all after the enacting clause and insert:

**SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

(a) SHORT TITLE.—This Act may be cited as the "Economic Growth Act of 1991".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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**TITLE I—INVESTMENT AND JOB CREATION INCENTIVES**

**Subtitle A—Reduction in Capital Gains Tax for Individuals**

**SEC. 101. REDUCTION IN CAPITAL GAINS TAX FOR INDIVIDUALS.**

(a) GENERAL RULE.—Part I of subchapter P of chapter 1 is amended by adding at the end thereof the following new section:

**"SEC. 1202. DEDUCTION FOR CAPITAL GAINS.**

"(a) DEDUCTION ALLOWED FOR CAPITAL GAIN.—

"(1) IN GENERAL.—If, for any taxable year, a taxpayer other than a corporation has a net capital gain, an amount equal to the sum of the applicable percentages of the applicable capital gain shall be allowed as a deduction.

"(2) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction under paragraph (1) shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.

"(b) APPLICABLE PERCENTAGES.—For purposes of this subsection, the applicable percentages shall be the percentages determined in accordance with the following table:

| "In the case of: | The applicable percentage is: |
|---|---|
| 1-year gain | 10 |
| 2-year gain | 20 |
| 3-year gain | 30. |

"(c) GAIN TO WHICH DEDUCTION APPLIES.—For purposes of this section—

"(1) APPLICABLE CAPITAL GAIN.—The term 'applicable capital gain' means 1-year gain, 2-year gain, or 3-year gain determined by taking into account only gain which is properly taken into account for periods on or after April 15, 1991.

"(2) 3-YEAR GAIN.—The term '3-year gain' means the lesser of—

"(A) the net capital gain for the taxable year, or

"(B) the long-term capital gain determined by taking into account only gain from the sale or exchange of assets held more than 3 years.

"(3) 2-YEAR GAIN.—The term '2-year gain' means the lesser of—

"(A) the net capital gain for the taxable year, reduced by 3-year gain, or

"(B) the long-term capital gain determined by taking into account only gain from the sale or exchange of assets held more than 2 years but not more than 3 years.

"(4) 1-YEAR GAIN.—The term '1-year gain' means the net capital gain for the taxable year determined by taking into account only—

"(A) gain from the sale or exchange of assets held more than 1 year but not more than 2 years, and

"(B) losses from the sale or exchange of assets held more than 1 year.

"(5) SPECIAL RULES FOR GAIN ALLOCABLE TO PERIODS BEFORE 1993.—For purposes of this section—

"(A) GAIN ALLOCABLE TO PERIODS AFTER APRIL 15, 1991, AND BEFORE 1992.—In the case of any gain from any sale or exchange which is properly taken into account for the period beginning on April 15, 1991, and ending on December 31, 1991, gain which is 1-year gain or 2-year gain (without regard to this subparagraph) shall be treated as 3-year gain.

"(B) GAIN ALLOCABLE TO 1992.—In the case of any gain from any sale or exchange which is properly taken into account for periods during 1992, gain which is 1-year gain or 2-year gain (without regard to this subparagraph) shall be treated as 2-year gain and 3-year gain, respectively.

"(6) SPECIAL RULES FOR PASS-THRU ENTITIES.—

"(A) IN GENERAL.—In applying this subsection with respect to any pass-thru entity, the determination of when a sale or ex-

change has occurred shall be made at the entity level.

"(B) PASS-THRU ENTITY DEFINED.—For purposes of subparagraph (A), the term 'pass-thru entity' means—

"(i) a regulated investment company,

"(ii) a real estate investment trust,

"(iii) an S corporation,

"(iv) a partnership,

"(v) an estate or trust, and

"(vi) a common trust fund.

"(7) RECAPTURE OF NET ORDINARY LOSS UNDER SECTION 1231.—For purposes of this subsection, if any amount is treated as ordinary income under section 1231(c) for any taxable year—

"(A) the amount so treated shall be allocated proportionately among the section 1231 gains (as defined in section 1231(a)) for such taxable year, and

"(B) the amount so allocated to any such gain shall reduce the amount of such gain."

(b) TREATMENT OF COLLECTIBLES.—

(1) IN GENERAL.—Section 1222 is amended by inserting after paragraph (11) the following new paragraph:

"(12) SPECIAL RULE FOR COLLECTIBLES.—

"(A) IN GENERAL.—Any gain or loss from the sale or exchange of a collectible shall be treated as a short-term capital gain or loss (as the case may be), without regard to the period such asset was held. The preceding sentence shall apply only to the extent the gain or loss is taken into account in computing taxable income.

"(B) TREATMENT OF CERTAIN SALES OF INTEREST IN PARTNERSHIP, ETC.—For purposes of subparagraph (A), any gain from the sale or exchange of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles held by such entity shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751(f) shall apply for purposes of the preceding sentence.

"(C) COLLECTIBLE.—For purposes of this paragraph, the term 'collectible' means any capital asset which is a collectible (as defined in section 408(m) without regard to paragraph (3) thereof)."

(2) CHARITABLE DEDUCTION NOT AFFECTED.—

(A) Paragraph (1) of section 170(e) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)."

(B) Clause (iv) of section 170(b)(1)(C) is amended by inserting before the period at the end thereof the following: "and section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)".

(c) MINIMUM TAX.—Section 56(b) is amended by adding at the end thereof the following new paragraph:

"(4) CAPITAL GAINS DEDUCTION DISALLOWANCE.—The deduction under section 1202 shall not be allowed."

(d) CONFORMING AMENDMENTS.—

(1) Subsection (h) of section 1 is hereby repealed.

(2) Section 12 is amended by striking paragraph (4) and redesignating the following paragraphs accordingly.

(3) Section 62(a) is amended by inserting after paragraph (13) the following new paragraph:

"(14) CAPITAL GAINS DEDUCTION.—The deduction allowed by section 1202."

(4) Clause (ii) of section 163(d)(4)(B) is amended by inserting ", reduced by the amount of any deduction allowable under section 1202 attributable to gain from such property" after "investment".

(5)(A) Section 170(e)(1)(B) is amended by inserting "(or, in the case of a taxpayer other than a corporation, the nondeductible percentage of the amount of gain)" after "the amount of gain".

(B) Section 170(e)(1) is amended by adding at the end thereof the following new sentence: "For purposes of subparagraph (B), the term 'nondeductible percentage' means 100 percent minus the applicable percentage with respect to such property under section 1202(b)."

(6)(A) Section 172(d)(2) (relating to modifications with respect to net operating loss deduction) is amended to read as follows:

"(2) CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation—

"(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

"(B) the deduction provided by section 1202 shall not be allowed."

(B) Subparagraph (B) of section 172(d)(4) is amended by inserting ", (2)(B)," after "paragraph (1)".

(7)(A) Section 221 (relating to cross reference) is amended to read as follows:

"SEC. 221. CROSS REFERENCES.

"(1) For deduction for net capital gain, see section 1201.

"(2) For deductions in respect of a decedent, see section 691."

(B) The table of sections for part VII of subchapter B of chapter 1 is amended by striking "reference" in the item relating to section 221 and inserting "references".

(8) Paragraph (4) of section 642(c) is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 1 year, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for net capital gain). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

(9) Paragraph (3) of section 643(a) is amended by adding at the end thereof the following new sentence: "The deduction under section 1202 (relating to deduction for net capital gain) shall not be taken into account."

(10) Paragraph (6)(C) of section 643(a) is amended—

(A) by inserting "(i)" before "there", and

(B) by inserting ", and (ii) the deduction under section 1202 (relating to deduction for excess of capital gains over capital losses)" before the period at the end thereof.

(11) Paragraph (4) of section 691(c) is amended by striking "1(h),".

(12) The second sentence of paragraph (2) of section 871(a) is amended by inserting "such gains and losses shall be determined without regard to section 1202 (relating to deduction for net capital gain) and" after "except that".

(13)(A) Subparagraph (B) of section 904(b)(2) is amended by striking out so much of such subparagraph as precedes clause (i) and inserting the following:

"(B) SPECIAL RULES WHERE CORPORATE CAPITAL RATE GAIN DIFFERENTIAL.—In the case of a corporation, for any taxable year for which there is a capital gain rate differential—".

(B) Subparagraphs (D) and (E) of section 904(b)(3) are amended to read as follows:

"(D) CAPITAL GAIN RATE DIFFERENTIAL.—There is a capital gain rate differential for any taxable year if any rate of tax imposed by section 11, 511, or 831 (a) or (b) (whichever applies) exceeds the alternative rate of tax under section 1201(a) (determined without regard to the last sentence of section 11(b)(1)).

"(E) RATE DIFFERENTIAL PORTION.—The rate differential portion of foreign source net capital gain, net capital, or the excess of net capital gain from sources within the United States over net capital gain, as the case maybe, is the same proportion of such amount as—

"(i) the excess of the highest rate of tax specified in section 11(b)(1) over the alternative rate of tax under section 1201(a), bears to

"(ii) the highest rate of tax specified in section 11(b)(1)."

(14) Section 1402(i)(1) is amended to read as follows:

"(1) IN GENERAL.—In determining the net earnings from self-employment of any options dealer or commodities dealer—

"(A) notwithstanding subsection (a)(3)(A), there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

"(B) the deduction provided by section 1202 shall not apply."

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 1202. Deduction for capital gains."

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending on or after April 15, 1991.

(2) TREATMENT OF COLLECTIBLES.—

(A) IN GENERAL.—The amendment made by subsection (b) shall apply to taxable years beginning after April 15, 1991.

(B) SPECIAL RULE FOR 1991 TAXABLE YEAR.—In case of any taxable year which includes April 15, 1991, for purposes of section 1202 of the Internal Revenue Code of 1986 and section 1(h) of such Code, any gain or loss from the sale or exchange of a collectible (within the meaning of section 1222(12) of such Code) shall be treated as gain or loss from a sale or exchange occurring before such date.

**SEC. 102. PREVENTION OF EXCESSIVE DEDUCTION.**

(a) GENERAL RULE.—Subsections (a) and (b) of section 1250 (relating to gain from disposition of certain depreciable realty) are amended to read as follows:

"(a) GENERAL RULE.—Except as otherwise provided in this section, if section 1250 property is disposed of, the lesser of—

"(1) the depreciation adjustments in respect of such property, or

"(2) the excess of—

"(A) the amount realized (or, in the case of a disposition other than a sale, exchange, or involuntary conversion, the fair market value of such property), over

"(B) the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

"(b) DEPRECIATION ADJUSTMENTS.—For purposes of this section, the term 'depreciation adjustments' means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to

the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185 (as in effect before its repeal by the Tax Reform Act of 1986), 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990, 190, or 193). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed."

(b) LIMITATION IN CASE OF INSTALLMENT SALES.—Subsection (i) of section 453 is amended—

(1) by striking "1250" the first place it appears and inserting "1250 (as in effect on the day before the date of the enactment of the Economic Growth and Jobs Creation Incentives Act of 1991",) and

(2) by striking "1250" the second place it appears and inserting "1250 (as so in effect)".

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 1250(d)(4) is amended—

(A) by striking "additional depreciation" and inserting "amount of the depreciation adjustments", and

(B) by striking "ADDITIONAL DEPRECIATION" in the subparagraph heading and inserting "DEPRECIATION ADJUSTMENTS".

(2) Subparagraph (B) of section 1250(d)(6) is amended to read as follows:

"(B) DEPRECIATION ADJUSTMENTS.—In respect of any property described in subparagraph (A), the amount of the depreciation adjustments attributable to periods before the distribution by the partnership shall be—

"(i) the amount of gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

"(ii) the amount of such gain to which section 751(b) applied."

(3) Subparagraph (D) of section 1250(d)(8) is amended—

(A) by striking "additional depreciation" each place it appears and inserting "amount of the depreciation adjustments", and

(B) by striking "ADDITIONAL DEPRECIATION" in the subparagraph heading and inserting "DEPRECIATION ADJUSTMENTS".

(4) Paragraph (8) of section 1250(d) is amended by striking subparagraphs (E) and (F) and inserting the following:

"(E) ALLOCATION RULES.—For purposes of this paragraph, the amount of gain attributable to the section 1250 property disposed of shall be the net amount realized with respect to such property reduced by the greater of the adjusted basis of the section 1250 property disposed of, or the cost of the section 1250 property acquired, but shall not exceed the gain recognized in the transaction."

(5) Subsection (d) of section 1250 is amended by striking paragraph (10).

(6) Section 1250 is amended by striking subsections (e), (f), and (g) and by redesignating subsections (h) and (i) as subsections (e) and (f), respectively.

(7) Paragraph (5) of section 48(q) is amended to read as follows:

"(5) RECAPTURE OF REDUCTION.—For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation."

(8) Clause (i) of section 267(e)(5)(D) is amended by striking "section 1250(a)(1)(B)" and inserting "section 1250(a)(1)(B (as in effect on the day before the date of the enactment of the Economic Growth Act of 1991)".

(9)(A) Subsection (a) of section 291 is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (1), (2), (3), and (4), respectively.

(B) Subsection (c) of section 291 is amended to read as follows:

"(c) SPECIAL RULE FOR POLLUTION CONTROL FACILITIES.—Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(4)."

(C) Section 291 is amended by striking subsection (d) and redesignating subsection (e) as subsection (d).

(D) Paragraph (2) of section 291(d) (as redesignated by subparagraph (C)) is hereby repealed.

(E) Subparagraph (A) of section 265(b)(3) is amended by striking "291(e)(1)(B)" and inserting "291(d)(1)(B)".

(F) Subsection (c) of section 1277 is amended by striking "291(e)(1)(B)(ii)" and inserting "291(d)(1)(B)(ii)".

(10) Subsection (d) of section 1017 is amended to read as follows:

"(d) RECAPTURE OF DEDUCTIONS.—For purposes of sections 1245 and 1250—

"(1) any property the basis of which is reduced under this section and which is neither section 1245 property nor section 1250 property shall be treated as section 1245 property, and

"(2) any reduction under this section shall be treated as a deduction allowed for depreciation."

(11) Paragraph (5) of section 7701(e) is amended by striking "(relating to low-income housing)" and inserting "(as in effect on the day before the date of the enactment of the Economic Growth and Dividend Act of 1991)."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions made on or after April 15, 1991, in taxable years ending on or after such date.

### Subtitle B—Inflation Adjustment for Investments

**SEC. 111. INDEXING OF CERTAIN INVESTMENTS AFTER APRIL 15, 1991 FOR PURPOSES OF DETERMINING GAIN.**

(a) IN GENERAL.—Part II of subchapter O of chapter 1 (relating to basis rules of general application) is amended by inserting after section 1021 the following new section:

**"SEC. 1022. INDEXING OF INVESTMENTS ACQUIRED AFTER APRIL 15, 1991 FOR PURPOSES OF DETERMINING GAIN.**

"(a) GENERAL RULE.—

"(1) INDEXED BASIS SUBSTITUTED FOR ADJUSTED BASIS.—Solely for purposes of determining gain on the sale or other disposition by an individual of an indexed asset which has been held for more than 1 year, the indexed basis of the asset shall be substituted for its adjusted basis.

"(2) SPECIAL RULE FOR RECAPTURE GAIN.—

"(A) IN GENERAL.—Paragraph (1) shall not apply for purposes of determining the amount of recapture gain on the sale or other disposition of an indexed asset, but the amount of any such recapture gain shall increase the adjusted basis of the asset for purposes of applying paragraph (1) to determine the amount of other gain on such sale or other disposition.

"(B) RECAPTURE GAIN.—For purposes of subparagraph (A), the term 'recapture gain' means any gain treated as ordinary income under section 1245, 1250, or 1254.

"(b) INDEXED ASSET.—

"(1) IN GENERAL.—For purposes of this section, the term 'indexed asset' means—

"(A) any stock in a corporation, and

"(B) any tangible property (or any interest therein),

which is a capital asset or property used in the trade or business (as defined in section 1231(B)) and the holding period of which begins after April 15, 1991.

"(2) CERTAIN PROPERTY EXCLUDED.—For purposes of this section, the term 'indexed asset' does not include—

"(A) CREDITOR'S INTEREST.—Any interest in property which is in the nature of a creditor's interest.

"(B) COLLECTIBLES.—Any collectible (as defined in section 408(m)(2) without regard to section 408(m)(3)).

"(C) OPTIONS.—Any option or other right to acquire an interest in property.

"(D) NET LEASE PROPERTY.—In the case of a lessor, net lease property (within the meaning of subsection (i)(3)).

"(E) CERTAIN PREFERRED STOCK.—Stock which is fixed and preferred as to dividends and does not participate in corporate growth to any significant extent.

"(F) STOCK IN FOREIGN CORPORATIONS.—Stock in a foreign corporation.

"(G) STOCK IN S CORPORATIONS.—Stock in an S corporation.

"(3) EXCEPTION FOR STOCK IN FOREIGN CORPORATION WHICH IS REGULARLY TRADED ON NATIONAL OR REGIONAL EXCHANGE.—Paragraph (2)(F) shall not apply to stock in a foreign corporation the stock of which is listed on the New York Stock Exchange, the American Stock Exchange, or any domestic regional exchange for which quotations are published on a regular basis or is authorized for trading on the national market system operated by the National Association of Securities Dealers other than—

"(A) stock of a foreign investment company (within the meaning of section 1246(b)),

"(B) stock in a passive foreign investment company (as defined in section 1296), and

"(C) stock in a foreign corporation held by a United States person who meets the requirements of section 1248(a)(2).

"(c) INDEXED BASIS.—For purposes of this section—

"(1) INDEXED BASIS.—The indexed basis for any asset is—

"(A) the adjusted basis of the asset, multiplied by

"(B) the applicable inflation ratio.

"(2) APPLICABLE INFLATION RATIO.—The applicable inflation ratio for any asset shall be determined by dividing—

"(A) the CPI for the calendar year preceding the calendar year in which the disposition takes place, by

"(B) the CPI for the calendar year preceding the calendar year in which the taxpayer's holding period for such asset began. The applicable inflation ratio shall not be taken into account unless it is greater than 1. The applicable inflation ratio for any asset shall be rounded to the nearest one-hundredth.

"(3) CONVENTIONS.—For purposes of paragraph (2), if any asset is disposed of during any calendar year—

"(A) such disposition shall be treated as occurring on the last day of such calendar year, and

"(B) the taxpayer's holding period for such asset shall be treated as beginning in the same calendar year as would be determined for an asset actually disposed of on such last day with a holding period of the same length as the actual holding period of the asset involved.

"(4) CPI.—For purposes of this subsection, the CPI for any calendar year shall be determined under section 1(f)(4).

"(d) SHORT SALES.—

"(1) IN GENERAL.—In the case of a short sale of an indexed asset with a short sale pe-

riod in excess of 1 year, for purposes of this title, the amount realized shall be an amount equal to the amount realized (determined without regard to this paragraph) multiplied by the applicable inflation ratio. In applying subsection (c)(2) for purposes of the preceding sentence, the date on which the property is sold short shall be treated as the date on which the holding period for the asset begins and the closing date for the sale shall be treated as the date of disposition.

"(2) SHORT SALE OF SUBSTANTIALLY IDENTICAL PROPERTY.—If the taxpayer or the taxpayer's spouse sells short property substantially identical to an asset held by the taxpayer, the asset held by the taxpayer and the substantially identical property shall not be treated as indexed assets for the short sale period.

"(3) SHORT SALE PERIOD.—For purposes of this subsection, the short sale period begins on the day after property is sold and ends on the closing date for the sale.

"(e) TREATMENT OF REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

"(1) ADJUSTMENTS AT ENTITY LEVEL.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the adjustment under subsection (a) shall be allowed to any qualified investment entity (including for purposes of determining the earnings and profits of such entity).

"(B) EXCEPTION FOR CORPORATE SHAREHOLDERS.—Under regulations in the case of a distribution by a qualified investment entity (directly or indirectly) to a corporation—

"(i) the determination of whether such distribution is a dividend shall be made without regard to this section, and

"(ii) the amount treated as gain by reason of the receipt of any capital gain dividend shall be increased by the percentage by which the entity's net capital gain for the taxable year determined without regard to this section exceeds the entity's net capital gain for such year determined with regard to this section.

For purposes of the preceding sentence, any amount includible in gross income under section 852(b)(3)(D) shall be treated as a capital gain dividend and an S corporation shall not be treated as a corporation.

"(C) EXCEPTION FOR QUALIFICATION PURPOSES.—This section shall not apply for purposes of sections 851(b) and 856(c).

"(D) EXCEPTION FOR CERTAIN TAXES IMPOSED AT ENTITY LEVEL.—

"(i) TAX ON FAILURE TO DISTRIBUTE ENTIRE GAIN.—If any amount is subject to tax under section 852(b)(3)(A) for any taxable year, the amount on which tax is imposed under such section shall be increased by the percentage determined under subparagraph (B)(ii). A similar rule shall apply in the case of any amount subject to tax under paragraph (2) or (3) of section 857(b) to the extent attributable to the excess of the net capital gain over the deduction for dividends paid determined with reference to capital gain dividends only. The first sentence of this clause shall not apply to so much of the amount subject to tax under section 852(b)(3)(A) as is designated by the company under section 852(b)(3)(D).

"(ii) OTHER TAXES.—This section shall not apply for purposes of determining the amount of any tax imposed by paragraph (4), (5), or (6) of section 857(b).

"(2) ADJUSTMENTS TO INTERESTS HELD IN ENTITY.—

"(A) IN GENERAL.—Stock in a qualified investment entity shall be an indexed asset for any calendar month in the same ratio as the fair market value of the assets held by such entity at the close of such month which are indexed assets bears to the fair market value of all assets of such entity at the close of such month.

"(B) RATIO OF 90 PERCENT OR MORE.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 90 percent or more, such ratio for such month shall be 100 percent.

"(C) RATIO OF 10 PERCENT OR LESS.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 10 percent or less, such ratio for such month shall be zero.

"(D) VALUATION OF ASSETS IN CASE OF REAL ESTATE INVESTMENT TRUSTS.—Nothing in this paragraph shall require a real estate investment trust to value its assets more frequently than once each 36 months (except where such trust ceases to exist). The ratio under subparagraph (A) for any calendar month for which there is no valuation shall be the trustee's good faith judgment as to such valuation.

"(3) QUALIFIED INVESTMENT ENTITY.—For purposes of this subsection, the term 'qualified investment entity' means—

"(A) a regulated investment company (within the meaning of section 851), and

"(B) a real estate investment trust (within the meaning of section 856).

"(f) OTHER PASS-THRU ENTITIES.—

"(1) PARTNERSHIPS.—

"(A) IN GENERAL.—In the case of a partnership, the adjustment made under subsection (a) at the partnership level shall be passed through to the partners (but only for purposes of determining the income of partners who are individuals).

"(B) SPECIAL RULE IN THE CASE OF SECTION 754 ELECTIONS.—In the case of a transfer of an interest in a partnership with respect to which the election provided in section 754 is in effect—

"(i) the adjustment under section 743(b)(1) shall, with respect to the transferor partner, be treated as a sale of the partnership assets for purposes of applying this section, and

"(ii) with respect to the transferee partner, the partnership's holding period for purposes of this section in such assets shall be treated as beginning on the date of such adjustment.

"(2) S CORPORATIONS.—In the case of an S corporation, the adjustment made under subsection (a) at the corporate level shall be passed through to the shareholders. This section shall not apply for purposes of determining the amount of any tax imposed by section 1374 or 1375.

"(3) COMMON TRUST FUNDS.—In the case of a common trust fund, the adjustment made under subsection (a) at the trust level shall be passed through to the participants (but only for purposes of determining the income of participants who are individuals).

"(g) DISPOSITIONS BETWEEN RELATED PERSONS.—This section shall not apply to any sale or other disposition of property between related persons (within the meaning of section 465(b)(3)(C)) if such property, in the hands of the transferee, is of a character subject to the allowance for depreciation provided in section 167.

"(h) SPECIAL RULES.—For purposes of this section—

"(1) TREATMENT AS SEPARATE ASSET.—In the case of any asset, the following shall be treated as a separate asset:

"(A) A substantial improvement to property.

"(B) In the case of stock of a corporation, a substantial contribution to capital.

"(2) ASSETS WHICH ARE NOT INDEXED ASSETS THROUGHOUT HOLDING PERIOD.—The applicable inflation ratio shall be appropriately reduced for periods during which the asset was not an indexed asset.

"(3) NET LEASE PROPERTY DEFINED.—The term 'net lease property' means leased property where—

"(A) the term of the lease (taking into account options to renew) was 50 percent or more of the useful life of the property, and

"(B) for the period of the lease, the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) is 15 percent or less of the rental income produced by such property."

(b) GAINS AND LOSSES FROM INDEXED ASSETS NOT TAKEN INTO ACCOUNT UNDER LIMITATION ON INVESTMENT INTEREST.—Subparagraph (B) of section 163(d)(4) (defining investment income) is amended by adding at the end thereof the following new sentences:

"Gain from the sale or other disposition of an indexed asset (as defined in section 1022) held for more than 1 year shall not be taken into account for purposes of the preceding sentence. The preceding sentence shall not apply to gain from the sale or other disposition of any such asset if the taxpayer elects to waive the benefits of section 1022 in determining the amount of such gain."

(c) CLERICAL AMENDMENT.—The table of sections for part II of subchapter O of chapter 1 is amended by inserting after the item relating to section 1021 the following new item:

"Sec. 1022. Indexing of investments acquired after April 15, 1990 for purposes of determining gain."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to dispositions of any property the holding period of which begins after April 15, 1991.

(2) EXCEPTION FOR CERTAIN TRANSACTIONS BETWEEN RELATED PERSONS.—The amendments made by subsections (a) and (b) shall not apply to any property acquired after April 15, 1991, from a related person (as defined in section 465(b)(3)(C) of the Internal Revenue Code of 1986) if—

(A) such property was so acquired for a price less than the property's fair market value, and

(B) the amendments made by this section did not apply to such property in the hands of such related person.

## Subtitle C—Enterprise Zones

### Part I—Designation

**SEC. 121. DESIGNATION OF ZONES.**

(a) GENERAL RULE.—Chapter 80 (relating to general rules) is amended by adding at the end thereof the following new subchapter:

**"Subchapter D—Designation of Enterprise Zones**

"Sec. 7880. Designation.

**"SEC. 7880. DESIGNATION.**

"(a) DESIGNATION OF ZONES.—

"(1) DEFINITION.—For purposes of this title, the term 'enterprise zone' means any area—

"(A) which is nominated by one or more local governments and the State or States in which it is located for designation as an enterprise zone (hereinafter in this section referred to as a 'nominated area'), and

"(B) which the Secretary of Housing and Urban Development, after consultation with—

"(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury; the Director of the Office of Management and Budget; and

the Administrator of the Small Business Administration, and

"(ii) in the case of an area on an Indian reservation, the Secretary of the Interior, designates as an enterprise zone.

"(2) AUTHORITY TO DESIGNATE.—The Secretary of Housing and Urban Development is authorized to designate enterprise zones in accordance with the provisions of this section.

"(3) LIMITATIONS ON DESIGNATIONS.—

"(A) PUBLICATION OF REGULATIONS.—Before designating any area as an enterprise zone and not later than 4 months following the date of the enactment of this section, the Secretary of Housing and Urban Development shall prescribe by regulation, after consultation with the officials described in paragraph (1)(B)—

"(i) the procedures for nominating an area, and

"(ii) the procedures for designation as an enterprise zone, including a method for comparing courses of action under subsection (d) proposed for nominated areas, and the other factors specified in subsection (e).

"(B) TIME LIMITATIONS.—The Secretary of Housing and Urban Development shall designate nominated areas as enterprise zones only during the 48-month period beginning on the later of—

"(i) the first day of the first month following the month in which the effective date of the regulations described in subparagraph (A) occurs, or

"(ii) June 30, 1991.

"(C) NUMBER OF DESIGNATIONS.—

"(i) IN GENERAL.—The Secretary of Housing and Urban Development may designate—

"(I) not more than 50 nominated areas as enterprise zones under this section and

"(II) not more than 15 nominated areas as enterprise zones during the first 12-month period beginning on the date determined under subparagraph (B), not more than 30 by the end of the second 12-month period, not more than 45 by the end of the third 12-month period, and not more than 50 by the end of the fourth 12-month period.

"(ii) MINIMUM DESIGNATION IN RURAL AREAS.—Of the areas designated as enterprise zones, at least one-third must be areas that are—

"(I) within a local government jurisdiction or jurisdictions with a population of less than 50,000 (as determined using the most recent census data available);

"(II) outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)); or

"(III) determined by the Secretary of Housing and Urban Development, after consultation with the Secretary of Commerce, to be rural areas.

"(D) PROCEDURAL RULES.—The Secretary of Housing and Urban Development shall not make any designations under this section unless—

"(i) the local government and the State in which the nominated area is located have the authority to—

"(I) nominate such area for designation as an enterprise zone,

"(II) make the State and local commitments under subsection (d), and

"(III) provide assurances satisfactory to the Secretary of Housing and Urban Development that such commitments will be fulfilled, and

"(ii) a nomination therefor is submitted by such State and local governments in such a manner and in such form, and contains such information, as the Secretary of Housing and Urban Development shall prescribe by regulation.

"(4) NOMINATION PROCESS FOR INDIAN RESERVATIONS.—In the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) shall be deemed to be both the State and local governments with respect to such area.

"(b) TIME PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—

"(1) IN GENERAL.—Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

"(A) December 31 of the 24th calendar year following the calendar year in which such date occurs,

"(B) the termination date specified by the State and local governments as provided in the nomination submitted in accordance with subsection (a)(3)(D)(ii),

"(C) such other date as the Secretary of Housing and Urban Development shall specify as a condition of designation, or

"(D) the date upon which the Secretary of Housing and Urban Development revokes such designation.

"(2) REVOCATION OF DESIGNATION.—The Secretary of Housing and Urban Development, after consultation with the officials described in subsection (a)(1)(B), may revoke the designation of an area if the Secretary of Housing and Urban Development determines that the State or a local government in which the area is located is not complying substantially with the agreed course of action for the area.

"(c) AREA AND ELIGIBILITY REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary of Housing and Urban Development may designate a nominated area as an enterprise zone only if it meets the requirements of paragraphs (2) and (3).

"(2) AREA REQUIREMENTS.—A nominated area meets the requirements of this paragraph if—

"(A) the area is within the jurisdiction of the local government;

"(B) the boundary of the area is continuous; and

"(C) the area—

"(i) has a population, as determined by the most recent census data available, of not less than—

"(I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(3)(C)(ii)) is located within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) with a population of 50,000 or more; or

"(II) 1,000 in any other case; or

"(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

"(3) ELIGIBILITY REQUIREMENTS.—For purposes of paragraph (1), a nominated area meets the requirements of this paragraph if the State or local governments in which the nominated area is located certifies, and the Secretary of Housing and Urban Development accepts such certification, that—

"(A) the area is one of pervasive poverty, unemployment and general distress;

"(B) the area is located wholly within the jurisdiction of a local government that is eligible for Federal assistance under section 119 of the Housing and Community Development Act of 1974, as in effect on the date of the enactment of this Act;

"(C) the unemployment rate for the area, as determined by the appropriate available data, was not less than 1.5 times the national unemployment rate for the period;

"(D) the poverty rate (as determined by the most recent census data available) for each populous census tract (or where not tracted, the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas) within the area was not less than 20 percent for the period to which such data relate; and

"(E) the area meets at least one of the following criteria:

"(i) Not less than 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the local government (determined in the same manner as under section 119(b)(2) of the Housing and Community Development Act of 1974).

"(ii) The population of the area decreased by 20 percent or more between 1970 and 1980 (as determined from the most recent census available).

"(4) ELIGIBILITY REQUIREMENTS FOR RURAL AREAS.—For purposes of paragraph (1), a nominated area that is a rural area described in subsection (a)(3)(C)(ii) meets the requirements of paragraph (3) if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that the area meets—

"(A) the criteria set forth in subparagraphs (A) and (B) of paragraph (3); and

"(B) not less than one of the criteria set forth in the other subparagraphs of paragraph (3).

"(d) REQUIRED STATE AND LOCAL COMMITMENTS.—

"(1) IN GENERAL.—No nominated area shall be designated as an enterprise zone unless the State and the local government or governments of the jurisdictions in which the nominated area is located agree in writing that, during any period during which the nominated area is an enterprise zone, such governments will follow a specified course of action designed to reduce the various burdens borne by employers or employees in such area.

"(2) COURSE OF ACTION.—The course of action under paragraph (1) may include, but is not limited to—

"(A) the reduction or elimination of tax rates or fees applying within the enterprise zone,

"(B) actions to reduce, remove, simplify, or streamline governmental requirements applying within the enterprise zone,

"(C) an increase in the level or efficiency of local services within the enterprise zone, for example, crime prevention, and drug enforcement prevention and treatment,

"(D) involvement in the program by private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a commitment from such private entities to provide jobs and job training for, and technical, financial or other assistance to, employers, employees, and residents of the nominated area,

"(E) mechanisms to increase equity ownership by residents and employees within the enterprise zone,

"(F) donation (or sale below market value) of land and buildings to benefit low and moderate income people,

"(G) linkages to—

"(i) job training,

"(ii) transportation,

"(iii) education,

"(iv) day care,

"(v) health care, and

"(vi) other social service support,

"(H) provision of supporting public facilities, and infrastructure improvements,

"(I) encouragement of local entrepreneurship; and

"(J) other factors determined essential to support enterprise zone activities and encourage livability or quality of life.

"(3) LATER MODIFICATION OF A COURSE OF ACTION.—The Secretary of Housing and Urban Development may by regulation prescribe procedures to permit or require a course of action to be updated or modified during the time that a designation is in effect.

"(e) PRIORITY OF DESIGNATION.—In choosing nominated areas for designation, the Secretary of Housing and Urban Development shall give preference to the nominated areas—

"(1) with respect to which the strongest and highest quality contributions have been promised as part of the course of action, taking into consideration the fiscal ability of the nominating State and local governments to provide tax relief,

"(2) with respect to which the nominating State and local governments have provided the most effective and enforceable guarantees that the proposed course of action will actually be carried out during the period of the enterprise zone designation,

"(3) with respect to which private entities have made the most substantial commitments in additional resources and contributions, including the creation of new or expanded business activities, and

"(4) which best exhibit such other factors determined by the Secretary of Housing and Urban Development, including relative distress, as are consistent with the intent of the enterprise zone program and have the greatest likelihood of success.

"(f) GEOGRAPHIC DISTRIBUTION.—In making designations, the Secretary of Housing and Urban Development will take into consideration a reasonable geographic distribution of enterprise zones.

"(g) DEFINITIONS.—For the purposes of this title—

"(1) GOVERNMENTS.—If more than one government seeks to nominate an area as an enterprise zone, any reference to, or requirement of, this section shall apply to all such governments.

"(2) STATE.—The term 'State' shall also include Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other possession of the United States.

"(3) LOCAL GOVERNMENT.—The term 'local government' means—

"(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State,

"(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary of Housing and Urban Development, and

"(C) the District of Columbia.".

"(h) CROSS REFERENCES FOR—

"(1) definitions, see section 1391,

"(2) treatment of employees in enterprise zones, see section 1392, and

"(3) treatment of investments in enterprise zones, see sections 1393 and 1394.".

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 80 is amended by adding at the end thereof the following new item:

"SUBCHAPTER D. Designation of enterprise zones.".

**SEC. 122. REPORTING REQUIREMENTS.**

Not later than the close of the second calendar year after the calendar year in which the Secretary of Housing and Urban Development first designates areas as enterprise zones, and at the close of each second calendar year thereafter, the Secretary of Housing and Urban Development shall submit to the Congress a report on the effects of such designation in accomplishing the purposes of this Act.

**SEC. 123. INTERACTION WITH OTHER FEDERAL PROGRAMS.**

(a) COORDINATION WITH RELOCATION ASSISTANCE.—The designation of an enterprise zone under section 7880 of the Internal Revenue Code of 1986 (as added by this Act) shall not—

(1) constitute approval of a Federal or federally assisted program or project (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601)); or

(2) entitle any person displaced from real property located in such zone to any rights or any benefits under such Act.

(b) COORDINATION WITH ENVIRONMENTAL POLICY.—Designation of an enterprise zone under section 7880 of such Code shall not constitute a Federal action for purposes of applying the procedural requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4341) or other provisions of Federal law relating to the protection of the environment.

Part II—Federal Income Tax Incentives

**SEC. 131. DEFINITIONS AND REGULATIONS; EMPLOYEE CREDIT; CAPITAL GAIN EXCLUSION; STOCK EXPENSING.**

(a) GENERAL RULE.—Chapter 1 (relating to normal tax and surtax rules) is amended by inserting after subchapter T the following new subchapter:

**"Subchapter U—Enterprise Zones**

"Sec. 1391. Definitions and regulatory authority.

"Sec. 1392. Credit for enterprise zone employees.

"Sec. 1393. Enterprise zone capital gain.

"Sec. 1394. Enterprise zone stock.

**"SEC. 1391. DEFINITIONS AND REGULATORY AUTHORITY.**

"(a) ENTERPRISE ZONE.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'enterprise zone' means any area which the Secretary of Housing and Urban Development designates pursuant to section 7880(a) as a Federal enterprise zone for purposes of this title.

"(2) TERMINATION OF ENTERPRISE ZONE.—An area will cease to constitute an enterprise zone once its designation as such terminates or is revoked under section 7880(b).

"(b) ENTERPRISE ZONE BUSINESS.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'enterprise zone business' means an activity constituting the active conduct of a trade or business within an enterprise zone, and with respect to which—

"(A) at least 80 percent of the gross income in each calendar year is attributable to the active conduct of a trade or business within an enterprise zone,

"(B) less than 10 percent of the property (as measured by unadjusted basis) constitutes stocks, securities, or property held for use by customers,

"(C) no more than an insubstantial portion of the property constitutes collectibles (as defined in section 408(m)(2)), unless such collectibles constitute property held primarily for sale to customers in the ordinary course of the active trade or business,

"(D) substantially all of the property (whether owned or leased) is located within an enterprise zone, and

"(E) substantially all of the employees work within an enterprise zone.

"(2) RELATED ACTIVITIES TAKEN INTO ACCOUNT.—Except as otherwise provided in regulations, all activities conducted by a taxpayer and persons related to the taxpayer shall be treated as one activity for purposes of paragraph (1).

"(3) SPECIAL RULES.—

"(A) RENTAL REAL PROPERTY.—For purposes of paragraph (1), real property located within an enterprise zone and held for use by customers other than related persons shall be treated as the active conduct of a trade or business for purposes of paragraph (1)(A) and as not subject to paragraph (1)(B).

"(B) TERMINATION OF ENTERPRISE ZONE BUSINESS.—An activity shall cease to be an enterprise zone business if—

"(i) the designation of the enterprise zone in which the activity is conducted terminates or is revoked pursuant to section 7880(b);

"(ii) more than 50 percent (by value) of the activity's property or services are obtained from related persons other than enterprise zone businesses; or

"(iii) more than 50 percent of the activity's gross income is attributable to property or services provided to related persons other than enterprise zone businesses.

"(c) ENTERPRISE ZONE PROPERTY.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'enterprise zone property' means—

"(A) any tangible personal property located in an enterprise zone and used by the taxpayer in an enterprise zone business, and

"(B) any real property located in an enterprise zone and used by the taxpayer in an enterprise zone business.

In no event shall any financial property or intangible interest in property be treated as constituting enterprise zone property, whether or not such property is used in the active conduct of an enterprise zone business.

"(2) TERMINATION OF ENTERPRISE ZONE.—The treatment of property as enterprise zone property under subparagraph (A) shall not terminate upon the termination or revocation of the designation of the enterprise zone in which the property is located, but instead shall terminate immediately after the first sale or exchange of such property occurring after the expiration or revocation.

"(d) RELATED PERSONS.—For purposes of this subchapter, a person shall be treated as related to another person if—

"(1) the relationship of such persons is described in section 267(b) or 707(b)(1), or

"(2) such persons are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

For purposes of paragraph (1), in applying section 267(b) or 707(b)(1), '33 percent' shall be substituted for '50 percent'.

"(e) REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subtitle C of title II of the Economic Growth Act of 1991, including—

"(1) providing that Federal tax relief is unavailable to an activity that does not stimulate employment in, or revitalization of, enterprise zones,

"(2) providing for appropriate coordination with other Federal programs that, in combination, might enable activity within enterprise zones to be more than 100 percent subsidized by the Federal Government, and

"(3) preventing the avoidance of the rules in this subchapter.

**"SEC. 1392. CREDIT FOR ENTERPRISE ZONE EMPLOYEES.**

"(a) GENERAL RULE.—In the case of a taxpayer who is an enterprise zone employee, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 5 percent of so much of the qualified wages of the taxpayer for the taxable year as does not exceed $10,500.

"(b) DEFINITIONS.—For purposes of this section—

"(1) ENTERPRISE ZONE EMPLOYEE.—The term 'enterprise zone employee' means an individual—

"(A) performing services during the taxable year that are directly related to the conduct of an enterprise zone business,

"(B) substantially all of the services described in paragraph (1)(A) are performed within an enterprise zone, and

"(C) the employer for whom the services described in paragraph (1)(A) are performed is not the Federal government, any State government or subdivision thereof, or any local government.

"(2) WAGES.—The term 'wages' has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such subsection).

"(3) QUALIFIED WAGES.—The term 'qualified wages' means all wages of the taxpayer, to the extent attributable to services described in paragraph (1).

"(c) LIMITATIONS.—

"(1) PHASE-OUT OF CREDIT.—The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

"(A) $525, over

"(B) 10.5 percent of so much of the taxpayer's total wages (whether or not constituting qualified wages) as exceeds $20,000.

"(2) PARTIAL TAXABLE YEAR.—If designation of an area as an enterprise zone occurs, expires, or is revoked pursuant to section 7880 on a date other than the first or last day of the taxable year of the taxpayer, or in the case of a short taxable year, the limitations specified in subsection (c)(1) shall be adjusted on a pro rata basis (based upon the number of days).

"(d) REDUCTION OF CREDIT TO TAXPAYERS SUBJECT TO ALTERNATIVE MINIMUM TAX.—The credit allowed under this section for the taxable year shall be reduced by the amount (if any) of tax imposed by section 55 (relating to the alternative minimum tax) with respect to such taxpayer for such year.

"(e) CREDIT TREATED AS SUBPART C CREDIT.—For purposes of this title, the credit allowed under subsection (a) shall be treated as a credit allowed under subpart C of part IV of subchapter A of this chapter.

**"SEC. 1393. ENTERPRISE ZONE CAPITAL GAIN.**

"(a) GENERAL RULE.—Gross income does not include the amount of any gain constituting enterprise zone capital gain.

"(b) DEFINITION.—For purposes of this section—

"(1) IN GENERAL.—The term 'enterprise zone capital gain' means gain—

"(A) treated as long-term capital gain,

"(B) allocable in accordance with the rules under subsection (b)(5) of section 338 to the sale or exchange of enterprise zone property, and

"(C) properly attributable to periods of use in an enterprise zone business.

"(2) LIMITATIONS.—Enterprise zone capital gain does not include any gain attributable to—

"(A) the sale or exchange of property not constituting enterprise zone property with respect to the taxpayer throughout the period of twenty-four full calendar months immediately preceding the sale or exchange,

"(B) any collectibles (as defined in section 408(m)), or

"(C) sales or exchanges to persons controlled by the same interests.

"(c) BASIS.—Amounts excluded from gross income pursuant to subsection (a) shall not be applied in reduction to the basis of any property held by the taxpayer.

**"SEC. 1394. ENTERPRISE ZONE STOCK.**

"(a) GENERAL RULE.—At the election of any individual, the aggregate amount paid by such taxpayer during the taxable year for the purchase of enterprise zone stock on the original issue of such stock by a qualified issuer shall be allowed as a deduction.

"(b) LIMITATIONS.—

"(1) CEILING.—The maximum amount allowed as a deduction under subsection (a) to a taxpayer shall not exceed $50,000 for any taxable year, nor $250,000 during the taxpayer's lifetime.

"(A) EXCESS AMOUNTS.—If the amount otherwise deductible by any person under subsection (a) exceeds the limitation under this paragraph (1)—

"(i) the amount of such excess shall be treated as an amount paid in the next taxable year, and

"(ii) the deduction allowed for any taxable year shall be allocated among the enterprise zone stock purchased by such person in accordance with the purchase price per share.

"(2) RELATED PERSON.—

"(A) IN GENERAL.—The taxpayer and all individuals related to the taxpayer shall be treated as one person for purposes of the limitations described in subsection (b)(1).

"(B) EXCESS AMOUNTS.—The limitations described in subsection (b)(1) shall be allocated among the taxpayer and related persons in accordance with their respective purchases of enterprise zone stock.

"(3) PARTIAL TAXABLE YEAR.—If designation of an area as an enterprise zone occurs, expires, or is revoked pursuant to section 7880 on a date other than the first or last day of the taxable year of the taxpayer, or in the case of a short taxable year, the limitations specified in subsection (b)(1) shall be adjusted on a pro rata basis (based upon the number of days).

"(c) DISPOSITIONS OF STOCK.—

"(1) GAIN TREATED AS ORDINARY INCOME.—Except as otherwise provided in regulations, if a taxpayer disposes of any enterprise zone stock with respect to which a deduction was allowed under subsection (a), the amount realized upon such disposition shall be treated as ordinary income and recognized notwithstanding any other provision of this subtitle.

"(2) INTEREST CHARGED IF DISPOSITION WITHIN 5 YEARS OF PURCHASE.—

"(A) IN GENERAL.—If a taxpayer disposes of any enterprise zone stock before the end of the 5-year period beginning on the date such stock was purchased by the taxpayer, the tax imposed by this chapter for the taxable year in which such disposition occurs shall be increased by the amount determined under subparagraph (B).

"(B) ADDITIONAL AMOUNT.—For purposes of subparagraph (A), the additional amount shall be equal to the amount of interest (determined at the rate applicable under section 6621(a)(2)) that would accrue—

"(i) during the period beginning on the date the stock was purchased by the taxpayer and ending on the date such stock was disposed of by the taxpayer,

"(ii) on an amount equal to the aggregate decrease in tax of the taxpayer resulting from the deduction allowed under this subsection (a) with respect to the stock so disposed of.

"(d) DISQUALIFICATION.—

"(1) ISSUER OR STOCK CEASES TO QUALIFY.—If a taxpayer elects the deduction under subsection (a) with respect to enterprise zone stock, and either—

"(A) the issuer with respect to which the election was made ceases to be a qualified issuer, or

"(B) the proceeds from the issuance of the taxpayer's enterprise zone stock fail or otherwise cease to be invested by the issuer in enterprise zone property, then, notwithstanding any provision of this subtitle other than paragraph (2) to the contrary, the taxpayer shall recognize as ordinary income the amount of the deduction allowed under subsection (a) with respect to the issuer's enterprise zone stock.

"(2) SPECIAL RULES.—

"(A) LIQUIDATION.—Where enterprise zone property acquired with proceeds from the issuance of enterprise zone stock is sold or exchanged pursuant to a plan of complete liquidation, the treatment described in paragraph (1) shall be inapplicable.

"(B) TERMINATION OF ENTERPRISE ZONE.—The treatment of an activity as an enterprise zone business shall not cease for purposes of paragraph (1) solely by reason of the termination or revocation of the designation of the enterprise zone with respect to the activity.

"(C) PARTIAL DISQUALIFICATION.—Where some, but not all, of the property acquired by the issuer with the proceeds of enterprise zone stock ceases to constitute enterprise zone property, the treatment described in paragraph (1) shall be modified as follows—

"(i) the total amount recognized as ordinary income by all shareholders of the issuer shall be limited to an amount of deduction allowed up to the unadjusted basis of property ceasing to constitute enterprise zone property,

"(ii) the amount recognized shall be allocated among enterprise zone stock with respect to which the election in subsection (a) was made in the reverse order in which such stock was issued, and

"(iii) the amount recognized shall be apportioned among taxpayers having made the election in subsection (a) in the ratios in which the stock described in paragraph (2)(C)(ii) was purchased.

"(3) ADDITIONAL AMOUNT.—If income is recognized pursuant to paragraph (1) at any time before the close of the 5th calendar year ending after the date the enterprise zone stock was purchased, the tax imposed by this chapter with respect to such income shall be increased by an amount equal to the amount of interest (determined at the rate applicable under section 6621(a)(2)) that would accrue—

"(A) during the period beginning on the date the stock was purchased by the taxpayer and ending on the date of the disqualification event described in paragraph (1),

"(B) on an amount equal to the aggregate decrease in tax of the taxpayer resulting from the deduction allowed under this subsection (a) with respect to the stock so disqualified.

"(e) DEFINITIONS.—For purposes of this section—

"(1) ENTERPRISE ZONE STOCK.—The term 'enterprise zone stock' means common stock issued by a qualified issuer, but only to the extent that the amount of proceeds of such issuance are used by such issuer no later than twelve months followed issuance to acquire and maintain an equal amount of newly acquired enterprise zone property.

"(2) QUALIFIED ISSUER.—

"(A) IN GENERAL.—The term 'qualified issuer' means any subchapter C corporation which—

"(i) does not have more than one class of stock,

"(ii) is engaged solely in the conduct of one or more enterprise zone businesses,

"(iii) does not own or lease more than $5 million of total property (including money), as measured by the unadjusted basis of the property, and

"(iv) more than 20 percent of the total voting power and 20 percent of the total value of the stock of such corporation is owned by individuals, partnerships, estates or trusts.

"(B) LIMITATION ON TOTAL ISSUANCES.—A qualified issuer may issue no more than an aggregate of $5 million of enterprise zone stock.

"(C) AGGREGATION.—For purposes of applying the limitations under paragraph (2), the issuer and all related persons shall be treated as one person.

"(3) AMOUNT PAID.—For purposes of subsection (a), the amount 'paid' by a taxpayer for any taxable year shall not include the issuance of evidences of indebtedness of the taxpayer (whether or not such indebtedness is guaranteed by another person), nor amounts paid by the taxpayer after the close of the taxable year.

"(f) ISSUANCES IN EXCHANGE FOR PROPERTY.—If enterprise zone stock is issued in exchange for property, then notwithstanding any provision of subchapter C of this chapter to the contrary—

"(1) the issuance shall be treated for purposes of this subtitle as the sale of the property at its then fair market value to the corporation, and a contribution to the corporation of the proceeds immediately thereafter in exchange for the enterprise zone stock, and

"(2) the issuer's basis for the property shall be equal to the fair market value of such property at the time of issuance.

"(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a taxpayer elects the deduction under subsection (a), the taxpayer's basis (without regard to this subsection) for the enterprise zone stock with respect to such election shall be reduced by the deduction allowed or allowable.

"(h) LIMITATIONS ON ASSESSMENT AND COLLECTION.—If a taxpayer elects the deduction under subsection (a) for any taxable year, then—

"(1) the period for assessment and collection of any deficiency attributable to any part of the deduction shall not expire before one year following expiration of such period of the qualified issuer that includes the circumstances giving rise to the deficiency, and

"(2) such deficiency may be assessed before expiration of the period described in paragraph (1) notwithstanding any provisions of this subtitle to the contrary.

"(i) CROSS REFERENCE.—

**For treatment of the deduction under subsection (a) for purposes of the alternative minimum tax, see section 56.".**

(b) TECHNICAL AMENDMENT.—Subsection (a) of section 1016 (relating to adjustments to basis) is amended by striking out "and" at the end of paragraph (23); by striking out the period at the end of paragraph (24) and inserting in lieu thereof "; and"; and by adding at the end thereof the following new paragraph:

"(25) to the extent provided in section 1394(g), in the case of stock with respect to which a deduction was allowed or allowable under section 1394(a).".

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 1 is amended by inserting after the item relating to subchapter T the following new item:

"SUBCHAPTER U. Enterprise zones."

**SEC. 132. ALTERNATIVE MINIMUM TAX.**

(a) CORPORATIONS.—Section 56(g)(4)(B) (relating to adjustments based on adjusted current earnings of corporations) is amended by adding the following new clause at the end thereof:

"(iii) EXCLUSION OF ENTERPRISE ZONE CAPITAL GAIN.—Clause (i) shall not apply in the case of any enterprise zone capital gain (as defined in section 1393(b)), and such gain shall not be included in income for purposes of computing alternative minimum taxable income.".

(b) INDIVIDUALS.—Section 56(b) (relating to adjustments to the alternative minimum taxable income of individuals) is amended by adding the following new paragraph at the end thereof:

"(4) ENTERPRISE ZONE STOCK.—No deduction shall be allowed for the purchase of enterprise zone stock (as defined in section 1394(e)).".

**SEC. 133. ADJUSTED GROSS INCOME DEFINED.**

Section 62(a) (relating to the definition of adjusted gross income) is amended by inserting after paragraph (14) the following new paragraph:

"(15) ENTERPRISE ZONE STOCK.—The deduction allowed by section 1394.".

**SEC. 134. EFFECTIVE DATE.**

The amendments made by this part shall apply to taxable years ending after December 31, 1990.

Part III—Regulatory Flexibility

**SEC. 141. DEFINITION OF SMALL ENTITIES IN ENTERPRISE ZONE FOR PURPOSES OF ANALYSIS OF REGULATORY FUNCTIONS.**

Section 601 of title 5, United States Code, is amended by—

(1) striking out "and" at the end of paragraph (5); and

(2) striking out paragraph (6) and inserting in lieu thereof the following:

"(6) the term 'small entity' means—

"(A) a small business, small organization, or small governmental jurisdiction defined in paragraphs (3), (4), and (5) of this section, respectively; and

"(B) any qualified enterprise zone business; any unit of government that nominated an area which the Secretary of Housing and Urban Development designates as an enterprise zone (within the meaning of section 7880 of the Internal Revenue Code of 1986) that has a rule pertaining to the carrying out of any project, activity, or undertaking within such zone; and any not-for-profit enterprise carrying out a significant portion of its activities within such a zone; and

"(7) the term 'qualified enterprise zone business' means any person, corporation, or other entity—

"(A) which is engaged in the active conduct of a trade or business within an enterprise zone (within the meaning of section 7880 of the Internal Revenue Code of 1986); and

"(B) for whom at least 50 percent of its employees are qualified employees (within the meaning of section 1392(b)(1) of such Code).".

**SEC. 142. WAIVER OR MODIFICATION OF AGENCY RULES IN ENTERPRISE ZONES.**

(a) Chapter 6 of title 5, United States Code, is amended by redesignating sections 611 and 612 as sections 612 and 613, respectively, and inserting the following new section immediately after section 610:

**"§ 611. Waiver or modification of agency rules in enterprise zones**

"(a) Upon the written request of any government which nominated an area that the Secretary of Housing and Urban Development has designated as an enterprise zone under section 7880 of the Internal Revenue Code of 1986, an agency is authorized, in order to further the job creation, community development, or economic revitalization objectives with respect to such zone, to waive or modify all or part of any rule which it has authority to promulgate, as such rule pertains to the carrying out of projects, activities, or undertakings within such zone.

"(b) Nothing in this section shall authorize an agency to waive or modify any rule adopted to carry out a statute or Executive order which prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, sex, familial status, national origin, age, or handicap.

"(c) A request under subsection (a) shall specify the rule or rules to be waived or modified and the change proposed, and shall briefly describe why the change would promote the achievement of the job creation, community development, or economic revitalization objectives of the enterprise zone. If such a request is made to any agency other than the Department of Housing and Urban Development, the requesting government shall send a copy of the request to the Secretary of Housing and Urban Development at the time the request is made.

"(d) In considering a request, the agency shall weigh the extent to which the proposed change is likely to further job creation, community development, or economic revitalization within the enterprise zone against the effect the change is likely to have on the underlying purposes of applicable statutes in the geographic area which would be affected by the change. The agency shall approve the request whenever it finds, in its discretion, that the public interest which the proposed change would serve in furthering such job creation, community development, or economic revitalization outweighs the public interest which continuation of the rule unchanged would serve. The agency shall not approve any request to waive or modify a rule if that waiver or modification would—

"(1) violate a statutory requirement (including any requirements of the Fair Labor Standards Act of 1938 (52 Stat. 1060; 29 U.S.C. 201 et seq.)); or

"(2) be likely to present a significant risk to the public health, including environmental or occupational health or safety, or of environmental pollution.

"(e) If a request is disapproved, the agency shall inform all the requesting governments, and the Department of Housing and Urban Development, in writing of the reasons therefor and shall, to the maximum extent possible, work with such governments to develop an alternative, consistent with the standards contained in subsection (d).

"(f) Agencies shall discharge their responsibilities under this section in an expeditious manner, and shall make a determination on requests not later than 90 days after their receipt.

"(g) A waiver or modification of a rule under subsection (a) shall not be considered to be a rule, rulemaking, or regulation under chapter 5 of this title. To facilitate reaching its decision on any requested waiver or modification, the agency may seek the views of interested parties and, if the views are to be sought, determine how they should be obtained and to what extent, if any, they should be taken into account in considering

the request. The agency shall publish a notice in the Federal Register stating any waiver or modification of a rule under this section, the time such waiver or modification takes effect and its duration, and the scope of applicability of such waiver or modification.

"(h) In the event that an agency proposes to amend a rule for which a waiver or modification under this section is in effect, the agency shall not change the waiver or modification to impose additional requirements unless it determines, consistent with standards contained in subsection (d), that such action is necessary. Such determinations shall be published with the proposal to amend such rule.

"(i) No waiver or modification of a rule under this section shall remain in effect with respect to an enterprise zone after the enterprise zone designation has expired or has been revoked.

"(j) For purposes of this section, the term 'rule' means (1) any rule as defined in section 551(4) of this title or (2) any rulemaking conducted on the record after opportunity for an agency hearing pursuant to sections 556 and 557 of this title.".

(b) The analysis for chapter 6 of title 5, United States Code, is amended by redesignating the items relating to sections 611 and 612 as items relating to sections 612 and 613, respectively, and by inserting after the item relating to section 610 the following new item:

"611. Waiver or modification of agency rules in enterprise zones.".

(c) Section 601(2) of such title 5 is amended by inserting "except for purposes of section 611" immediately before "means".

(d) Section 613 of such title 5, as redesignated by subsection (a), is amended—

(1) in subsection (a) by inserting "(except section 611)" immediately after "chapter"; and

(2) in subsection (b) by inserting "as defined in section 601(2)" immediately before the period at the end of the first sentence.

**SEC. 143. FEDERAL AGENCY SUPPORT OF ENTERPRISE ZONES.**

In order to maximize all agencies' support of enterprise zones, the Secretary of Housing and Urban Development is authorized to convene regional and local coordinating councils of any appropriate agencies to assist State and local governments to achieve the objectives agreed to in the course of action under section 7880 of the Internal Revenue Code of 1986.

Part IV—Establishment of Foreign Trade Zones in Enterprise Zones

**SEC. 151. FOREIGN-TRADE ZONE PREFERENCES.**

(a) PREFERENCE IN ESTABLISHMENT OF FOREIGN-TRADE ZONES IN REVITALIZATION AREAS.—In processing applications for the establishment of foreign-trade zones pursuant to an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", approved June 18, 1934 (48 Stat. 998), the Foreign-Trade Zone Board shall consider on a priority basis and expedite, to the maximum extent possible, the processing of any application involving the establishment of a foreign-trade zone within an enterprise zone designated pursuant to section 7880 of the Internal Revenue Code of 1986.

(b) APPLICATION PROCEDURE.—In processing applications for the establishment of ports of entry pursuant to "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and fifteen, and for other purposes", approved August 1, 1914 (38 Stat. 609), the Secretary of the Treasury shall consider on a priority basis and expedite, to the maximum extent possible, the processing of any application involving the establishment of a port of entry which is necessary to permit the establishment of a foreign-trade zone within an enterprise zone so designated.

(c) APPLICATION EVALUATION.—In evaluating applications for the establishment of foreign-trade zones and ports of entry in connection with enterprise zones so designated, the Foreign-Trade Zone Board and the Secretary of the Treasury shall approve the applications, to the maximum extent practicable, consistent with their respective statutory responsibilities.

Part V—Repeal of Title VII of The Housing and Community Development Act of 1987

**SEC. 161. REPEAL.**

Title VII of the Housing and Community Development Act of 1987 is hereby repealed.

**Subtitle D—Research and Experimentation Credit Made Permanent**

**SEC. 171. RESEARCH AND EXPERIMENTATION CREDIT MADE PERMANENT.**

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking subsection (h).

(b) CONFORMING AMENDMENT.—Section 28(b)(1) of the Internal Revenue Code of 1986 (relating to clinical testing expenses for certain drugs for rare diseases or conditions) is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

**TITLE II—SAVINGS INCENTIVES**

**SEC. 201. ESTABLISHMENT OF INDIVIDUAL RETIREMENT PLUS ACCOUNTS.**

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by inserting after section 408 the following new section:

**"408A. INDIVIDUAL RETIREMENT PLUS ACCOUNTS.**

"(a) GENERAL RULE.—Except as provided in this section, an individual retirement plus account shall be treated for purposes of this title in the same manner as an individual retirement plan.

"(b) INDIVIDUAL RETIREMENT PLUS ACCOUNT.—For purposes of this title, the term 'individual retirement plus account' means an individual retirement plan which is designated at the time of the establishment of the plan as an individual retirement plus account. Such designation shall be made in such manner as the Secretary may prescribe.

"(c) CONTRIBUTION RULES.—

"(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to an individual retirement plus account.

"(2) CONTRIBUTION LIMIT.—

"(A) IN GENERAL.—Except in the case of rollover contributions, the aggregate amount which may be accepted as contributions to an individual retirement plus account shall not be greater than the excess (if any) of—

"(i) the nondeductible limit with respect to the individual for the taxable year under section 408(o) (after application of subparagraph (B)(ii) thereof), over

"(ii) the designated nondeductible contributions made by the individual for such taxable year to 1 or more individual retirement plans.

"(B) $1,000 INCREASE AFTER 1996.—In the case of any taxable year beginning after December 31, 1996, the amount determined under subparagraph (A)(i) (without regard to this subparagraph) shall be increased by $1,000.

"(C) SPECIAL RULE FOR MARRIED INDIVIDUALS.—The nondeductible limits under subparagraph (A) for an individual and for such individual's spouse shall be an amount equal to the excess (if any) of—

"(i) $2,000, over

"(ii) the sum of the amount allowed as a deduction under section 219 for contributions on behalf of such individual or such spouse, plus the amount determined under subparagraph (A)(ii) with respect to each.

In no event shall the sum of such limits exceed an amount equal to the sum of the compensation includible in the individual's and spouse's gross income for the taxable year, reduced by the sum of the amounts determined under clause (ii).

"(3) CONTRIBUTIONS AFTER AGE 70½.—Contributions may be made by an individual to an individual retirement plus account after such individual has attained the age of 70½.

"(4) LIMITATIONS ON ROLLOVER CONTRIBUTIONS.—No rollover contributions may be made to an individual retirement plus account unless such rollover contribution is a contribution of a distribution or payment out of—

"(A) another individual retirement plus account, or

"(B) an individual retirement plan which is not allocable to any amount transferred to such plan which represented any portion of the balance to the credit of an employee in a qualified trust (or any income allocable to such portion).

"(d) DISTRIBUTION RULES.—For purposes of this title—

"(1) IN GENERAL.—Except in the case of a qualified distribution, the rules of paragraphs (1) and (2) of section 408(d) shall apply to any distribution from an individual retirement plus account.

"(2) TREATMENT OF QUALIFIED DISTRIBUTION.—In the case of a qualified distribution from an individual retirement plus account—

"(A) the amount of such distribution shall not be includible in gross income; and

"(B) section 72(t) shall not apply.

"(3) QUALIFIED DISTRIBUTION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified distribution' means any distribution—

"(i) made on or after the date on which the individual attains age 59½,

"(ii) made to a beneficiary (or to the estate of an individual) on or after the death of the individual, or

"(iii) attributable to the employee's being disabled (within the meaning of section 72(m)(7)).

"(B) DISTRIBUTIONS WITHIN 5 YEARS.—No distribution shall be treated as a qualified distribution if—

"(i) it is made within the 5-taxable year period beginning with the 1st taxable year in which the individual made a contribution to an individual retirement plus account, or

"(ii) in the case of a distribution properly allocable to a rollover contribution (or income allocable thereto), it is made within 5 years of the date on which such rollover contribution was made.

"(4) SPECIAL RULES RELATING TO ROLLOVERS FROM REGULAR INDIVIDUAL RETIREMENT ACCOUNTS.—

"(A) IN GENERAL.—Except as provided in this paragraph, any amount paid or distrib-

uted out of an individual retirement plan on or before the earlier of—

"(i) the date on which the individual attains age 55, or

"(ii) June 30, 1993,

shall not be included in gross income (and section 72(t) shall not apply to such amount) if the individual receiving such amount transfers, within 60 days of receipt, the entire amount received to an individual retirement plus account.

"(B) TREATMENT OF TAX-FAVORED AMOUNTS.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A), there shall be included in gross income (but section 72(t) shall not apply to) the portion of any amount transferred which bears the same ratio to such amount as—

"(I) the aggregate amount of contributions to individual retirement plans with respect to which a deduction was allowable under section 219, bears to

"(II) the aggregate balance of such plans.

"(ii) TIME FOR INCLUSION.—Any amount described in clause (i) shall be included in gross income ratably over the 4-taxable year period beginning with the taxable year in which the amount was paid or distributed out of the individual retirement plan.

"(e) ROLLOVER CONTRIBUTIONS.—For purposes of this section, the term 'rollover contributions' means contributions described in sections 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), and 408(d)(3).

"(f) DETERMINATIONS.—For purposes of this section, any determinations with respect to aggregate contributions to, or the balance of, individual retirement plus accounts shall be made as of the close of the calendar year preceding the calendar year in which the taxable year begins.".

(b) CONFORMING AMENDMENT.—The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 408 the following new item:

"Sec. 408A. Individual retirement plus accounts.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

## TITLE III—HOMEOWNERSHIP INCENTIVES

### Subtitle A—First-Time Homebuyers Tax Credit

#### SEC. 301. CREDIT FOR PURCHASE OF PRINCIPAL RESIDENCE BY FIRST-TIME HOMEBUYER.

(a) GENERAL RULE.—Subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) is amended by redesignating section 35 as section 36 and by inserting after section 34 the following new section:

**"SEC. 35. PURCHASE OF PRINCIPAL RESIDENCE BY FIRST-TIME HOMEBUYER.**

"(a) ALLOWANCE OF CREDIT.—If an individual who is a first-time homebuyer purchases a principal residence during the taxable year, there shall be allowed to such individual as a credit against the tax imposed by this subtitle for such taxable year an amount equal to $1,000.

"(b) INCOME LIMITATIONS.—

"(1) IN GENERAL.—No credit shall be allowed under subsection (a) to any individual whose adjusted gross income for the taxable year exceeds $41,000.

"(2) PHASE-DOWN OF CREDIT.—The $1,000 amount set forth in subsection (a) shall be reduced by $10 for each $100 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $31,000.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' has the meaning given to such term by section 408A(e)(3)(E)(ii).

"(2) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(3) PURCHASE.—The term 'purchase' means any acquisition of property, but only if the basis of such property in the hands of the person acquiring it is not determined—

"(A) in whole or in part by the reference to the adjusted basis of such property in the hands of the person from whom acquired, or

"(B) under section 1014(a) (relating to property acquired from a decedent).

"(4) TREATMENT OF MARRIED INDIVIDUALS.—The adjusted gross income of any individual for any taxable year shall include the adjusted gross income of such individual's spouse for such spouse's taxable year corresponding to the taxable year of the individual. For purposes of the preceding sentence, marital status shall be determined under section 7703; except that an individual shall not be treated as being married if such individual would not be treated as being married under section 21(e)(4).

"(5) JOINT PURCHASES.—If a residence is purchased together by 2 or more individuals for use as their principal residence—

"(A) such individuals shall be limited to 1 credit under this section for such purchase and the amount of such credit shall be allocated among such individuals in the manner prescribed by the Secretary,

"(B) no credit shall be allowed under this section for such purchase unless all of such individuals are first-time homebuyers, and

"(C) the aggregate adjusted gross income of all of such individuals shall be taken into account in determining the amount of the credit allowable under this section for such purchase."

(b) CLERICAL AMENDMENTS.—The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 35 and inserting the following:

"Sec. 35. Purchase of principal residence by first-time homebuyer.

"Sec. 36. Overpayments of tax."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to principal residences purchased after July 31, 1991.

### Subtitle B—Penalty-Free IRA Plus Withdrawal for Home Purchase, Higher Education, and Health Costs

#### SEC. 311. PENALTY-FREE IRA PLUS WITHDRAWAL FOR HOME PURCHASE, HIGHER EDUCATION, AND HEALTH COSTS.

(a) GENERAL RULE.—Subparagraph (A) of section 408A(d)(3) (as added by title II) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or", and by adding at the end thereof the following new clause:

"(iv) which is a qualified special purpose distribution (within the meaning of subsection (e)).

(b) QUALIFIED SPECIAL PURPOSE DISTRIBUTION DEFINED.—Section 408A (as so added) is amended by redesignating subsections (e) and (f) as (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

"(e) QUALIFIED SPECIAL PURPOSE DISTRIBUTION FROM IRA PLUS ACCOUNTS.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified special purpose distribution' means—

"(A) a qualified first-time homebuyer distribution, or

"(B) an applicable medical or educational distribution.

"(2) 25 PERCENT ACCOUNT LIMIT.—

"(A) IN GENERAL.—A distribution shall not be treated as a qualified special purpose distribution to the extent it exceeds the amount (if any) by which—

"(i) 25 percent of the sum of—

"(I) the aggregate balance of individual retirement plus accounts established on behalf of an individual, plus

"(II) the aggregate amounts previously treated as qualified special purpose distributions, exceeds

"(ii) the amount determined under clause (i)(II).

"(B) LIMITATION NOT TO APPLY FOR PURPOSES OF SECTION 72(t).—Section 72(t) shall not apply to any distribution which would be a qualified distribution but for the limitations of subparagraph (A).

"(3) DISTRIBUTIONS FROM IRA PLUS ACCOUNTS USED TO PURCHASE A HOME BY FIRST-TIME HOMEBUYER.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'qualified first-time homebuyer distribution' means any payment or distribution received by a first-time homebuyer (or by a parent or grandparent of a first-time homebuyer) from an individual retirement plan to the extent such payment or distribution is used by the individual receiving the payment or distribution before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence for such first-time homebuyer.

"(B) BASIS REDUCTION.—The basis of any principal residence described in subparagraph (A) shall be reduced by any amount excluded from the gross income of such first-time homebuyer (or parent or grandparent thereof) by reason of this section.

"(C) RECOGNITION OF GAIN AS ORDINARY INCOME.—

"(i) IN GENERAL.—Notwithstanding any other provision of this subtitle, except as provided in clause (ii)—

"(I) gain (if any) on the sale or exchange of a principal residence to which subparagraph (A) applies shall, to the extent of the amount excluded from gross income under this section, be treated as ordinary income by such individual, and

"(II) section 72(t) shall apply to such amount.

"(ii) EXCEPTION.—Clause (i) shall not apply to any taxable year to the extent of any amount which, before the due date (without extensions) for filing the return for such year, the taxpayer contributes to an individual retirement plus account. Such amount shall not be taken into account for purposes of any provision of this title relating to excess contributions.

"(iii) COORDINATION WITH OTHER PROVISIONS.—In the event all or part of the gain referred to in clause (i) is treated as ordinary income under any other provision of this subtitle, such provision shall be applied before clause (i).

"(D) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If—

"(i) any amount is paid or distributed from an individual retirement plus account to an individual for purposes of being used as provided in subparagraph (A), and

"(ii) by reason of a delay in the acquisition of the residence, such amount cannot be so used,

the amount so paid or distributed may be paid into an individual retirement plus account as provided in section 408(d)(3)(A)(i) without regard to section 408(d)(3)(B), and, if so paid into such other plan, such amount shall not be taken into account in determining whether section 408(d)(3)(A)(i) applies to any other amount.

"(E) DEFINITIONS.—For purposes of this paragraph—

"(i) QUALIFIED ACQUISITION COSTS.—The term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

"(ii) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this paragraph applies.

"(iii) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(iv) DATE OF ACQUISITION.—The term 'date of acquisition' means the date—

"(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

"(II) on which construction or reconstruction of such a principal residence is commenced.

"(4) APPLICABLE MEDICAL DISTRIBUTIONS FROM IRA PLUS ACCOUNTS.—For purposes of paragraph (1), the term 'applicable medical distributions' means any distributions made to an individual (not otherwise taken into account under this subsection) to the extent such distributions do not exceed the amount allowable as a deduction under section 213 for amounts paid during the taxable year for medical care (without regard to whether the individual itemized deductions for the taxable year). For purposes of determining the amount so allowable, any child or grandchild of the taxpayer shall be treated as a dependent of the taxpayer.

"(5) DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLUS ACCOUNTS FOR EDUCATIONAL EXPENSES.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'applicable educational distributions' means distributions to an individual to the extent that the amount of such distributions (not otherwise treated as qualified special purpose distributions, determined after application of paragraph (4)) does not exceed the qualified higher education expenses of the individual for the taxable year.

"(B) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of—

"(I) the taxpayer,

"(II) the taxpayer's spouse, or

"(III) the taxpayer's child (as defined in section 151(c)(3)) or grandchild,

at an eligible educational institution (as defined in section 135(c)(3)).

"(ii) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified higher education expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

## TITLE IV—WORK INCENTIVES

### Subtitle A—Reduction in Social Security Penalty on Working Elderly

**SEC. 401. PHASED-IN INCREASES IN THE EARNINGS TEST OVER THE PERIOD 1992-1997 FOR INDIVIDUALS WHO HAVE ATTAINED NORMAL RETIREMENT AGE.**

(a) IN GENERAL.—Subparagraph (D) of section 203(f)(8) of the Social Security Act (42 U.S.C. 403(f)(8)) is amended to read as follows:

"(D)(i) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be—

"(I) for each month of the taxable year ending after 1991 and before 1993, the exempt amount so applicable for each month of the preceding taxable year, plus 1/12 of $1,000,

"(II) for each month of the taxable year ending after 1992 and before 1994, the exempt amount so applicable for each month of the preceding taxable year, plus 1/12 of $1,000,

"(III) for each month of the taxable year ending after 1993 and before 1995, the exempt amount so applicable for each month of the preceding taxable year, plus 1/12 of $1,000,

"(IV) for each month of the taxable year ending after 1994 and before 1996, the exempt amount so applicable for each month of the preceding taxable year, plus 1/12 of $1,000,

"(V) for each month of the taxable year ending after 1995 and before 1997, the exempt amount so applicable for each month of the preceding taxable year, plus 1/12 of $1,000,

"(VI) for each month of the taxable year ending after 1996 and before 1998, the exempt amount so applicable for each month of the preceding taxable year, plus 1/12 of $1,000.

"(ii) For purposes of subparagraph (B)(ii)(II), the increase in the exempt amount provided under clause (i)(VI) shall be deemed to have resulted from a determination which shall be deemed to have been made under subparagraph (A) in 1996.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years ending after 1991.

**SEC. 402. TRANSFERS TO TRUST FUNDS.**

(a) IN GENERAL.—There are hereby appropriated to each payor fund amounts equivalent to the aggregate increase in social security benefits payable from such fund which is attributable to the amendment made by section 401.

(b) TRANSFERS.—The amounts appropriated by subsection (a) to a payor fund shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such subsection. Any such quarterly payment shall be made on the first day of such quarter and shall take into account social security benefits estimated to be received during such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(c) DEFINITIONS.—For purposes of this section—

(1) PAYOR FUND.—The term "payor fund" means the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

(2) SOCIAL SECURITY BENEFITS.—The term "social security benefits" means any amount received by a person by reason of entitlement to monthly benefits under title II of the Social Security Act.

(d) REPORTS.—The Secretary of the Treasury shall submit annual reports to the Congress and to the Secretary of Health and Human Services on—

(1) the transfers made under this section during the year, and the methodology used in determining the amount of such transfers and the payor funds to which made, and

(2) the anticipated operation of this section during the next 5 years.

**SEC. 403. STUDY TO DETERMINE IMPACT OF TOTAL REPEAL.**

(a) STUDY.—The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall undertake in 1997 a study for the purpose of determining whether further amendments relating to deductions on account of work and the exempt amount provided for under section 203 of the Social Security Act are necessary or appropriate. Such study shall be conducted in full consultation with the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce. The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce shall provide the Secretary with such appropriate assistance and information requested by the Secretary as the Secretary considers necessary and appropriate to carry out the study under this section.

(b) SPECIFIC MATTERS TO BE STUDIED.—

(1) IN GENERAL.—The Secretary, in carrying out the study provided for in this section, shall address, analyze, and report specifically on various effects—

(A) which have resulted from the amendment made by section 401, and

(B) which would reasonably be expected to result from repeal, effective with respect to taxable years ending after calendar year 1997, of the provisions relating to deductions on account of work and the exempt amount provided for under section 203 of the Social Security Act.

The Secretary shall include in the report any other information which the Secretary considers would be relevant and useful to the Congress in considering legislation relating to deductions on account of work and the exempt amount.

(2) EFFECTS TO BE INCLUDED IN STUDY.—The effects referred to in paragraph (1) shall include—

(A) the effect on numbers in the workforce, by category of income;

(B) the effect on the purchasing power of members of the workforce, expressed in constant dollars;

(C) the effect on the working elderly with wage or salary income at or below the national average wage level;

(D) the short-term and long-term effect on the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund;

(E) the effect on the Federal budget; and

(F) the effect on the national economy.

(c) REPORTS.—The Secretary shall submit to each House of the Congress, not later than November 1, 1997, a final report of the findings of such study.

### Subtitle B—Economic Growth Dividend

**SEC. 411. USE OF ECONOMIC GROWTH DIVIDEND.**

(a) GENERAL RULE.—If the Secretary of the Treasury (hereinafter in this title referred to as the "Secretary") determines that there is an economic growth dividend for any fiscal year beginning on or after October 1, 1992, such dividend shall be used to increase the amount of the personal exemptions as provided in section 412.

(b) ECONOMIC GROWTH DIVIDEND.—For purposes of this Act—

(1) there is an economic growth dividend for any fiscal year if the Secretary determines that the real growth in the gross national product during such fiscal year was at a rate in excess of 3 percent, and

(2) the amount of the economic growth dividend for such fiscal year is the amount which the Secretary estimates will be the annual increase in Federal tax receipts resulting from the real growth in the gross national product during such fiscal year at a rate in excess of 3 percent.

Determinations under the preceding sentence shall be made before the close of the calendar year in which the fiscal year ends.

(c) SPECIAL RULE FOR FISCAL YEARS BEFORE 1996.—In the case of any fiscal year beginning before October 1, 1995, subsection (b) shall be applied by substituting for "3 percent" each place it appears the estimated rate of real growth in the gross national product for such fiscal year as set forth in the President's budget submission for such fiscal year under section 1105 of title 31, United States Code.

**SEC. 412. INCREASE IN AMOUNT OF PERSONAL EXEMPTIONS.**

(a) GENERAL RULE.—If the Secretary determines that there is an economic growth dividend for any fiscal year beginning on or after October 1, 1992, the amount of the exemption amount for taxable years beginning after the close of the calendar year in which such fiscal year ends shall be increased by an amount which the Secretary estimates will reduce Federal tax receipts for taxable years beginning in the following calendar year by an amount equal to 100 percent of the amount of such economic growth dividend.

(b) SPECIAL RULE FOR FISCAL YEARS BEFORE 1996.—In the case of any fiscal year beginning before October 1, 1995, 50 percent of the economic growth dividend shall be used in accordance with subsection (a), and 50 percent of the growth dividend shall be used to make a downward adjustment in the maximum deficit amount of section 250(c)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(c) EXEMPTION AMOUNT.—For purposes of this section, the term 'exemption amount' means the amount which would otherwise be the exemption amount under section 151(d) of the Internal Revenue Code of 1986 before the application of paragraphs (2) and (3) thereof.

(d) INFLATION ADJUSTMENTS.—Any increase determined under this section shall be adjusted for increases in the cost of living under procedures similar to those provided in section 151(d)(4) of such Code.

**SEC. ____. EMERGENCY DESIGNATION.**

(a) EMERGENCY DESIGNATION.—Pursuant to sections 252(e) and 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Congress hereby designates all direct spending amounts and receipts legislation provided by this Act (for all fiscal years) and all appropriations authorized by this Act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EFFECTIVENESS.—Notwithstanding any other provision of law or any other provision of this Act, none of the preceding sections of this Act shall take effect unless the President submits to the Congress a written designation of all direct spending amounts and receipts legislation provided by this Act for all fiscal years and all appropriations authorized by this Act (for all fiscal years) as emergency requirements within the meaning of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

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## KASTEN AMENDMENT NO. 1013

(Ordered to lie on the table.)

Mr. KASTEN submitted an amendment intended to be proposed by him to the bill S. 1554, supra, as follows:

At the end of the bill insert the following new title:

TITLE —PLANT OPENING AND JOB CREATION INCENTIVES

**SEC. . SHORT TITLE; AMENDMENT OF 1986 CODE.**

(a) SHORT TITLE.—This title may be cited as the "Plant Opening Act of 1991."

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

Subtitle A—General Incentives

**SEC. .REDUCTION IN CAPITAL GAINS TAX RATE.**

(a) IN GENERAL.—Section 1201 (relating to alternative tax for corporations) is amended to read as follows:

**"SEC. 1201. ALTERNATIVE TAX.**

"If for any taxable year a taxpayer has a net capital gain, then, in lieu of the tax imposed by sections 1, 11, 511, 821(a) or (c), and 831(a), there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

"(1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

"(2) a tax of 15 percent of the net capital gain."

(c) REDUCTION IN MINIMUM TAX RATE ON CAPITAL GAINS.—Paragraph (1) of section 55(b) is amended by adding at the end thereof the following new sentence:

"To the extent the excess referred to in subparagraph (A) does not exceed the net capital gain for the taxable year (determined with the adjustments of this part), subparagraph (A) shall be applied by substituting '15 percent' for the percentages set forth in subparagraph (A)."

(d) CONFORMING AMENDMENTS.—

(1) Subsection (j) of section 1 is hereby repealed.

(2) The table of sections for part I of subchapter P of chapter 1 is amended by striking the item relating to section 1201 and inserting the following:

"Sec. 1201. Alternative tax."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

**SEC. . REINSTATEMENT OF EDUCATIONAL ASSISTANCE EXCLUSION.**

(a) GENERAL RULE.—Section 127 (relating to educational assistance programs) is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

**SECTION. . LIBERALIZATION OF EARNINGS TEST OVER THE PERIOD 1992-1996 FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.**

(a) IN GENERAL.—Effecrive with respect to taxable years ending after 1991, subparagraph (D) of section 203(f)(8) of the Social Security Act is amended to read as follows:

"(D) Nothwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be increased by $3,000 in each taxable year over the exempt amount for the previous taxable year, beginning with any taxable year ending after 1991 and before 1993.".

(b) CONFORMING AMENDMENT.—The second sentence of section 223(d)(4) of such Act is amended by striking out "which is applicable to individual described in subparagraph (D) thereof" and inserting in lieu thereof "which would be applicable to individuals who have attained retirement age (as defined in section 216(l)) without regard to any increase in such amount resulting from a law enacted in 1991".

**SEC. . REPEAL OF EARNINGS TEST IN 1997 FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.**

Effective with respect to taxable years ending after 1996—

(1) clause (B) in the third sentence of section 203(f)(1) of the Social Security Act is amended by striking out "age seventy" and inserting in lieu thereof "retirement age (as defined in section 216(l))"; and (2) section 203(f)(3) of such Act is amended—

(A) by striking out "33⅓ percent" and all that follows through "other individual" and inserting in lieu thereof "50 percent of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8)", and

(B) by striking out "age 70" and inserting in lieu thereof "retirement age (as defined in section 216(l))".

**SEC. . CONFORMING AND RELATED AMENDMENTS.**

Effective with respect to taxable years ending after 1996—

(1) section 203(c)(1) of the Social Security Act is amended by striking out "is under the age of seventy" and inserting in lieu thereof "is under retirement age (as defined in section 216(l))";

(2) the last sentence of subsection (c) of section 203 of such Act is amended by striking out "nor shall any deduction" and all that follows and inserting in lieu thereof "nor shall any deduction be made under this subsection from any widow's or widower's insurance benefit if the widow, surviving divorced wife, widower, or surviving divorced husband involved became entitled to such benefit prior to attaining age 60.";

(3) paragraphs (1)(A) and (2) of section 203(d) of such Act are each amended by striking out "under the age of seventy" and inserting in lieu thereof "under retirement age (as defined in section 216(l))";

(4) section 203(f)(1) of such Act is amended by striking out clause (D) and inserting in lieu thereof the following: "(D) for which such indivudal is entitled to widow's or widower's insurance benefits if such individual became so entitled prior to attaining age 60, or";

(5) subparagraph (D) of section 203(f)(5) of such Act is amended—

(A) by striking out "(D) In the case of" and all that follows down through "(ii) an individual" and inserting in lieu thereof the following: "(D) An individual";

(B) by striking out "because entitled to such benefits" and all that follows and inserting in lieu thereof "became entitled to such benefits, there shall be excluded from gross income any such other income."; and

(C) by shifting such subparagraph as so amended to the left to the extent necessary to align its left margin with that of subparagraphs (A) through (C) of such section;

(11) section 203(j) of such Act is amended to read as follows:

"Atttainment of Retirement Age

"(j) For purposes of this section—

"(1) an individual shall be considered as having attained retirement age (as defined in section 216(l)) during the entire month in which he attains such age; and

"(2) the term 'retirement age (as defined in section 216(l))', with respect to any individual entitled to monthly insurance benefits under section 202, means the retirement age (as so defined) which is applicable in the case of old-age insurance benefits, regardless of whether or not the particular benefits to which the individual is entitled (or the only such benefits) are old-age insurance benefits.";

(12) section 202(w)(2)(B)(ii) of such Act is amended—

(A) by striking out "either"; and

(B) by striking out "or suffered deductions under section 203(b) or 203(c) in amounts equal to the amount of such benefit"; and

(13) the second sentence of section 223(d)(4) of such Act (as amended by section 1(b) of this Act) is further amended by striking out "without regard to any increase in such amount resulting from a law enacted in 1991" and inserting in lieu thereof "but for the liberalization and repeal of the earnings test for such individuals in 1992".

**SEC. . ACCELERATION OF 8 PERCENT DELAYED RETIREMENT CREDIT.**

Effective with respect to taxable years ending after 1991, paragraph (6) of section 202(w) of the Social Security Act is amended—

(1) by striking out "2005" in subparagraph (C) and inserting in lieu thereof "1993"; and

(2) by striking out "2004" in subparagraph (D) and inserting in lieu thereof "1992".

Subtitle B—Enterprise Zones

**SEC. . SHORT TITLE.**

This subtitle may be cited as the "Enterprise Zone Development and Employment Act of 1991".

**SEC. . PURPOSES.**

It is the purpose of this subtitle to provide for the establishment of entreprise zones in order to stimulate the creation of new jobs, particularly for disadvantaged workers and long-term unemployed individuals, and to promote revitalization of economically distressed areas primarily by providing or encouraging—

(1) tax relief at the Federal, State, and local levels;

(2) regulatory relief at the Federal, State, and local levels; and

(3) improved local services and an increase in the economic stake of enterprise zone residents in their own community and its development, particularly through the increased involvement of private, local, and neighborhood organizations.

PART I—DESIGNATION OF ENTERPRISE ZONES

**SEC. . DESIGNATION OF ZONES.**

(a) GENERAL RULE.—Chapter 80 (relating to general rules) is amended by adding at the end thereof the following new suchapter:

"Subchapter D—Designation of Enterprise Zones

"Sec. 7881. Designation.

**"SEC. 7881. DESIGNATION.**

(a) DESIGNATION OF ZONES.—

"(1) DEFINITIONS.—For purposes of this title, the term 'enterprise zone' means any area—

"(A) which is nominated by one or more local governments and the State or States in which it is located for designation as an enterprise zone (hereinafter in this section referred to as a 'nominated area'), and

"(B) which the Secretary of Housing and Urban Development, after consultation with—

"(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury; the Director of the Office of Management and Budget; and the Administrator of the Small Business Administration, and

"(ii) in the case of an area on an Indian reservation, the Secretary of the Interior,

designates as an enterprise zone.

"(2) NUMBER OF DESIGNATIONS.—

"(A) IN GENERAL.—The Secretary of Housing and Urban Development may designate not more than 100 nominated areas as enterprise zones.

"(B) MINIMUM DESIGNATION IN RURAL AREAS.—Of the areas designated under clause (i), at least one-fourth must be areas—

"(i) which are within a local government jurisdiction or jurisdictions with a population of less than 50,000 (as determined under the most recent census data available),

"(ii) which are outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)), or

"(iii) which are determined by the Secretary of Housing and Urban Development, after consultation with the Secretary of Commerce, to be rural areas.

"(3) AREAS DESIGNATED BASED SOLELY ON DEGREE OF POVERTY, ETC.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary of Housing and Urban Development shall designate those nominated areas with the highest average ranking with respect to the criteria described in subparagraphs (C), (D), (E), and (F) of subsection (c)(3). For purposes of the preceding sentence, an area shall be ranked within each such criterion on the basis of the amount by which the area exceeds such criterion, with the area which exceeds such criterion by the greatest amount given the highest ranking.

"(B) EXCEPTION WHERE INADEQUATE COURSE OF ACTION, ETC.—An area shall not be designated under subparagraph (A) if the Secretary of Housing and Urban Development determines that the course of action with respect to such area is inadequate.

"(C) SEPARATE APPLICATION TO RURAL AND OTHER AREAS.—Subparagraph (A) shall be applied separately with respect to areas described in paragraph (2)(B) and to other areas.

"(4) LIMITATION ON DESIGNATIONS.—

"(A) PUBLICATION OF REGULATIONS.—Before designating any area as an enterprise zone, the Secretary of Housing and Urban Development shall prescribe by regulation no later than 4 months following the enactment of this section, after consultation with the officials described in paragraph (1)(B)—

"(i) the procedures for nominating an area under paragraph (1)(A),

"(ii) the parameters relating to the size and population characteristics of an enterprise zone, and

"(iii) the manner in which nominated areas will be evaluated based on the criteria specified in subsection (d).

"(B) TIME LIMITATIONS.—The Secretary of Housing and Urban Development shall designate nominated areas as enterprise zones only during the 24-month period beginning on the later of—

"(i) the first day of the first month following the month in which the effective date of the regulations described in subparagraph (A) occurs, or

"(ii) July 1, 1989.

"(C) PROCEDURAL RULES.—The Secretary of Housing and Urban Development shall not make any designation under paragraph (1) unless—

"(i) the local governments and the State in which the nominated area is located have the authority—

"(I) to nominate such area for designation as an enterprise zone.

"(II) to make the State and local commitments under subsection (d), and

"(III) to provide assurances satisfactory to the Secretary of Housing and Urban Development that such commitments will be fulfilled,

"(ii) a nomination therefor is submitted in such a manner and in such form and contains information, as the Secretary of Housing and Urban Development shall by regulation prescribe,

"(iii) the Secretary of Housing and Urban Development determines that any information furnished is reasonably accurate, and

"(iv) the State and local governments certify that no portion of the area nominated is already included in an enterprise zone or in an area othewise nominated to be an enterprise zone.

"(5) NOMINATION PROCESS FOR INDIAN RESERVATIONS.—In the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) shall be deemed to be both the State and local governments with respect to such area.

"(b) PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—

"(1) IN GENERAL.—Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

"(A) December 31 of the 24th calendar year following the calendar year in which such date occurs,

"(B) the termination date designated by the State and local governments as provided for in their nomination pursuant to subsection (a)(4)(C)(ii), or

"(C) the date the Secretary of Housing and Urban Development revokes such designation under paragraph (2).

"(2) REVOCATION OF DESIGNATION.—The Secretary of Housing and Urban Development may after—

"(A) consultation with the officials described in subsection (a)(1)(B), and

"(B) a hearing on the record involving officials of the State or local government involved,

revoke the designation of an area if the Secretary of Housing and Urban Development determines that the local government or the State in which it is located is not complying substantially with the State and local commitments pursuant to subsection (d).

"(c) AREA AND ELIGIBILITY REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary of Housing and Urban Development may make a designation of any nominated area under subsection (a)(1) only if it meets the requirements of paragraphs (2) and (3).

"(2) AREA REQUIREMENTS.—A nominated area meets the requirements of this paragraph if—

"(A) the area is within the jurisdiction of the local government,

"(B) the boundary of the area is continuous, and

"(C) the area—

"(i) has a population as determined by the most recent census data available, of at least—

"(I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(2)(B)(i)) is located within a metropolitan statistical area (within the meaning of section 103A(1)(4)(B)) with a population of 50,000 or greater, or

"(II) 1,000 in any other case, or

"(II) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

"(3) ELIGIBILITY REQUIREMENTS.—For purposes of paragraph (1), a nominated area meets the requirements of this paragraph if the State and local governments in which it is located certify and the Secretary of Housing and Urban Development, after such review of supporting data as he deems appropriate, accepts such certification, that—

"(A) the area is one of pervasive poverty, unemployment, and general distress,

"(B) the area is located wholly within the jurisdiction of a local government which is eligible for Federal assistance under section 119 of the Housing and Community Development act of 1974, as in effect on the date of the enactment of this section,

"(C) the unemployment rate, as determined by the appropriate available data, was at least 1½ times the national unemployment rate for that period,

"(D) the povery rate (as determined by the most recent census data available) for each populous census tract (or where not tracted, the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas) within the area was at least 20 percent for the period to which such data relate,

"(E) at least 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the local government (determined in the same manner as under section 119(b)(2) of the Housing and Community Development Act of 1974), and

"(F) the population of the area decreased by 20 percent or more between 1970 and 1980 (as determined from the most recent census available).

"(d) REQUIRED STATE AND LOCAL COMMITMENTS.—

"(1) IN GENERAL.—No nominated area shall be designated as an enterprise zone unless the local government and the State in which it is located agree in writing that, during any period during which the area is an enterprise zone, such governments will follow a specified course of action designated to reduce the various burdens borne by employers or employees in such area. A course of action shall not be treated as meeting the requirements of this paragraph unless the course of action include provisions described in at least 4 of the subparagraphs of paragraph (2).

"(2) COURSE OF ACTION.—The course of action under paragraph (1) may be implemented by both such governments and private nongovernmental entities, may be funded from proceeds of any Federal program, and may include, but is not limited to—

"(A) a reduction of tax rates or fees applying within the enterprise zone,

"(B) an increase in the level of efficiency of local services within the enterprise zone; for example, crime prevention (particularly through experimentation with providing such services by nongovernmental entities),

"(C) actions to reduce, remove, simplify, or streamline governmental requirements applying within the enterprise zone,

"(D) involvement in the program by private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a commitment from such private entities to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents of the nominated area,

"(E) the allowance of a deduction from State or local income taxes for fees paid or accrued for services performed by a nongovernmental entity but which were formerly performed by a governmental entity,

"(F) the giving of special preference to contractors owned and operated by members of any minority, and

"(G) the gift (or sale at below fair market value) of surplus land in the enterprise zone to neighborhood organizations agreeing to operate a business on the land.

"(3) RECOGNITION OF PAST EFFORTS.—In evaluating courses of action agreed to by any State or local government, the Secretary of Housing and Urban Development shall take into account the past efforts of such State or local government in reducing the various burdens borne by employers and employees in the area involved.

"(e) DEFINITIONS.—For the purposes of this title—

"(1) GOVERNMENTS.—If more than one government seeks to nominate an area as an enterprise zone, any reference to, or requirement of, this section shall apply to all such governments.

"(2) STATE.—The term 'State' shall also include Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other possession of the United States.

"(3) LOCAL GOVERNMENT.—The term 'local government' means—

"(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State,

"(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary of Housing and Urban Development, and

"(C) the District of Columbia."

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 80 is amended by adding at the end thereof the following new item:

"Subchapter D. Designation of Enterprise Zones."

**SEC. . EVALUATION AND REPORTING REQUIREMENTS.**

Not later than the close of the fourth calendar year after the year in which the Secretary of Housing and Urban Development first designates areas as enterprise zones, and at the close of each fourth calendar year thereafter, the Secretary of Housing and Urban Development shall prepare and submit to the Congress a report on the effects of such enterprise zones' designation in accomplishing the purposes of this Act.

**SEC. . INTERACTION WITH OTHER FEDERAL PROGRAMS.**

(a) TAX REDUCTIONS.—Any reduction of taxes under any required program of State and local commitment under section 7881(d) of the Internal Revenue Code of 1986 shall be disregarded in determining the eligibility of a State or local government for, or the amount or extent of, any assistance or benefits under any law of the United States.

(b) COORDINATION WITH RELOCATION ASSISTANCE.— The designation of an enterprise zone under section 7881 of the Internal Revenue Code of 1986 shall not—

(1) constitute approval of a Federal or federally assisted program or project (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601)), or

(2) entitle any person displaced from real property located in such zone to any rights or any benefits under such Act.

(c) ENTERPRISE ZONES TREATED AS LABOR SURPLUS AREAS.—Any area which is designated as an enterprise zone under section 7881 of the Internal Revenue Code of 1986 shall be treated for all purposes under Federal law as a labor surplus area.

PART II—FEDERAL INCOME TAX INCENTIVES

Subpart A—Credits for Employers and Employees

**SEC. . CREDIT FOR ENTERPRISE ZONE EMPLOYERS.**

(a) CREDIT FOR INCREASED ENTERPRISE ZONE EMPLOYMENT AND EMPLOYMENT OF DISADVANTAGED WORKERS.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by inserting after section 29 the following new section:

**"SEC. 30. CREDIT FOR ENTERPRISE ZONE EMPLOYMENT.**

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

"(1) 10 percent of the qualified increased employment expenditures of the taxpayer for the taxable year, and

"(2) the economically disadvantaged credit amount of the taxpayer for such taxable year.

"(b) LIMITATIONS BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The credit allowed by subsection (a) for a taxable year shall not exceed the excess (if any) of—

"(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 28, and 29, over

"(B) the tentative minimum tax for the taxable year.

"(2) CARRYBACK AND CARRYOVER OF UNUSED CREDIT.—

"(A) ALLOWANCE OF CREDIT.—If the amount of the credit determined under this section for any taxable year exceeds the limitation provided by paragraph (1) for such taxable year (hereinafter in this paragraph referred to as the 'unused credit year'), such excess shall be—

"(i) an enterprise zone employment credit carryback to each of the 3 taxable years preceding the unused credit year, and

"(ii) an enterprise zone employment credit carryover to each of the 15 taxable years following the unused credit year,

and shall be added to the amount allowable as a credit by this section for such years. If any portion of such excess is a carryback to a taxable year beginning before January 1, 1989, this section shall be deemed to have been in effect for such taxable year for purposes of allowing such carryback as a credit under this section. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 18 taxable years to which (by reason of clauses (i) and (ii)) such credit may be carried, and then to each of the other 17 taxable years to the extent that, because of the limitation contained in subparagraph (B), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

"(B) LIMITATION.—The amount of the unused credit which may be added under subparagraph (A) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by para-

graph (1) for such taxable year exceeds the sum of—

"(i) the credit allowable under this section for such taxable year, and

"(ii) the amounts which, by reason of this paragraph, are added to the amount allowable for such taxable year and which are attributable to taxable years preceding the unused credit year.

"(c) QUALIFIED INCREASED EMPLOYMENT EXPENDITURES DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified increased employment expenditures' means the excess of—

"(A) the qualified wages paid or incurred by the employer during the taxable year to qualified employees with respect to all enterprise zones, over

"(B) the base period wages of the employer with respect to all such zones.

"(2) LIMITATIONS AS TO QUALIFIED WAGES TAKEN INTO ACCOUNT.—

"(A) DOLLAR AMOUNT.—The amount of any qualified wages taken into account under paragraph (1) for any taxable year with respect to any qualified employee may not exceed 2.5 times the dollar limitation in effect under section 3306(b)(1) for the calendar year with or within which such taxable year ends.

"(B) APPLICATION WITH ECONOMICALLY DISADVANTAGED CREDIT AMOUNT.—Qualified wages shall not be taken into account under paragraph (1) if such wages are taken into account in determining the economically disadvantaged credit amount under subsection (d).

"(3) BASE PERIOD WAGES.—

"(A) IN GENERAL.—The term 'base period wages' means, with respect to any enterprise zone, the amount of wages paid to employees during the 12-month period preceding the date on which the enterprise zone was designated as such under section 7881, or the date on which the enterprise zone is designated under State law, enacted after January 1, 1981, if earlier, which would have been qualified wages paid to qualified employees if such designation had been in effect for such period.

"(B) RULES OF SPECIAL APPLICATION.—For purposes of subparagraph (A)—

"(i) subsection (f)(1) shall be applied by substituting '12-month period' for 'taxable year' each place it appears, and

"(ii) the dollar limitation taken into account under paragraph (2) in computing qualified wages shall be the amount in effect for taxable year for which the amount of the credit under subsection (a) is being computed.

"(d) ECONOMICALLY DISADVANTAGED CREDIT AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'economically disadvantaged credit amount' means the sum of the applicable percentage of qualified wages paid to each qualified economically disadvantaged individual.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means, with respect to any qualified economically disadvantaged individual, the percentage determined in accordance with the following table:

| "If the qualified wages are paid for services performed during: | The applicable percentage is: |
|---|---|
| The first 3 years after starting date .. | 50 |
| The 4th year after the starting date .. | 40 |
| The 5th year after the starting date .. | 30 |
| The 6th year after the starting date .. | 20 |
| The 7th through 20th year after the starting date ..... | 10 |
| The 21st year after the starting date or later ..... | 0 |

"(3) STARTING DATE; BREAKS IN SERVICE.—For purposes of this subsection—

"(A) STARTING DATE.—The term 'starting date' means the day which the qualified economically disadvantaged individual begins work for the employer within an enterprise zone.

"(B) BREAKS IN SERVICE.—The periods described in the table under paragraph (2) (other than the first such period) shall be extended by any period of time during which the individual is unemployed, and by any period of time during which the individual is employed by a taxpayer in an enterprise zone designated under State law enacted after January 1, 1981, if such designation occurs prior to the designation of the enterprise zone under section 7881.

"(e) QUALIFIED WAGES DEFINED.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'qualified wages' has the meaning given to the term 'wages' by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

"(2) REDUCTION FOR CERTAIN FEDERALLY FUNDED PAYMENTS.—For purposes of this section the wages paid or incurred by an employer for any period shall not include the amount of any Federally funded payments the employer receives or is entitled to receive for on-the-job training of such individual for such period.

"(3) SPECIAL RULES FOR AGRICULTURAL AND RAILWAY LABOR.—Under regulations prescribed by the Secretary, rules similar to the rules of section 51(h) shall apply with respect to services described in subparagraphs (A) and (B) of section 51(h)(1).

"(f) QUALIFIED EMPLOYEE DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified employee' means an individual—

"(A) at least 90 percent of whose services for the employer during the taxable year are directly related to the conduct of the employer's trade or business located in an enterprise zone, and

"(B) who performs at least 50 percent of his services for the employer during the taxable year in an enterprise zone.

"(2) EXCEPTION FOR INDIVIDUALS WITH RESPECT TO WHOM CREDIT IS DETERMINED UNDER SECTION 51(A).—The term 'qualified employee' shall not include an individual with respect to whom any credit for the employer is determined under section 51(a) for the taxable year (relating to targeted jobs credit).

"(g) QUALIFIED ECONOMICALLY DISADVANTAGED INDIVIDUAL.—

"(1) For purposes of this section, the term 'qualified economically disadvantaged individual' means an individual—

"(A) who is a qualified employee,

"(B) who is hired by the employer during the period a designation under section 7881 is in effect for the area in which the services which qualify such individual as a qualified employee are performed, and

"(C) who is certified as—

"(i) an economically disadvantaged individual,

"(ii) an eligible work incentive employee (within the meaning of section 51(d)(9)), or

"(iii) a general assistance recipient (within the meaning of section 51(d)(6)).

"(2) ECONOMICALLY DISADVANTAGED INDIVIDUAL.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'economically disadvantaged individual' means any individual who is certified by the designated local agency as being a member of a family that had a combined family income (including the cash value of food stamps) during the 6 months preceding the month in which such determination occurs that on an annual basis, was equal to or less than the sum of—

"(i) the highest amount which would ordinarily be paid to a family of the same size without any income or resources in the form of payments for aid to families with dependent children under the State plan approved under part A of title IV of the Social Security Act for the State in which such individual resides, plus,

"(ii) the highest cash value of the food stamps to which a family of the same size without any income or resources would be paid aid to families with dependent children under such State plan in the amount determined under clause (i). Any such determination shall be valid for the 45-day period beginning on the date such determination is made.

"(B) SPECIAL RULE FOR FAMILIES WITH ONLY 1 INDIVIDUAL.—For purposes of clause (i) of subparagraph (A), in the case of a family consisting of only one individual, the 'highest amount which would ordinarily be paid' to such family under the State's plan approved under part A of title IV of the Social Security Act shall be an amount determined by the designated local agency on the basis of a reasonable relationship to the amounts payable under such plan to families consisting of two or more persons.

"(3) CERTIFICATION.—Certification of an individual as an individual described in paragraph (1)(C) shall be made in the same manner as certification under section 51.

"(h) SPECIAL RULES.—For purposes of this section—

"(1) APPLICATION TO CERTAIN ENTITIES, ETC.—Under reguations prescribed by the Secretary, rules similar to the rules of section 52 (other than subsection (b) thereof) and section 41(f)(3) shall apply.

"(2) PERIODS OF LESS THAN A YEAR.—If designation of an area as an enterprise zone under section 7871 occurs, expires, or is revoked on a date other than the first or last day of the taxable year of the taxpayer, or in the case of a short taxable year—

"(A) the limitation specified in subsection (c)(2)(A), and the base period wages determined under subsection (c)(3), shall be adjusted on a pro rata basis (based upon the number of days), and

"(B) the reduction specified in subsection (e)(2) and the 90 percent and 50 percent tests set forth in subsection (f)(1) shall be determined by reference to the portion of the taxable year during which the designation of the area as an enterprise zone is in effect.

"(i) PHASEOUT OF CREDIT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), in determining the amount of the credit for a taxable year under subsection (a) with respect to qualified wages paid or incurred for services performed in an enterprise zone—

"(A) the following percentages shall be substituted for '10 percent' in subsection (a)(1):

"(i) 7.5 percent in the earlier of—

"(I) the taxable year which includes the date which is 21 years after the date on which such enterprise zone was designated under section 7881, or

"(II) the taxable year which includes the date which is 4 years before the date (if any) on which such enterprise zone ceases to be a zone under section 7881(b)(1)(B),

"(ii) 5 percent in the next succeeding taxable year,

"(iii) 2.5 percent in the second next succeeding taxable year, and

"(iv) zero thereafter, and

"(B) the amount determined under subsection (a)(2) shall be reduced by—

"(i) 25 percent in the case of the taxable year described in paragraph (1)(A),

"(ii) 50 percent in the next succeeding taxable year,

"(iii) 75 percent in the second next succeeding taxable year, and

"(iv) 100 percent thereafter.

"(2) REVOCATION OF DESIGNATION.—If the designation of an area as an enterprise zone is revoked under section 7881(b)(2), such area shall continue to be treated as an enterprise zone for the period of 3 taxable years beginning after the date of such revocation except that only the allowable percentage of the amount of the credit which would (but for this paragraph) be allowable under this section for such a year shall be allowed. For purposes of the preceding sentence, the term 'allowable percentage' means the amount determined in accordance with the following table:

| "If the taxable year beginning after the revocation is: | The allowable percentage is: |
|---|---|
| The first such year | 75 |
| The second such year | 50 |
| The third such year | 25. |

"(j) EARLY TERMINATION OF EMPLOYMENT BY EMPLOYER IN CASE OF QUALIFIED ECONOMICALLY DISADVANTAGED INDIVIDUALS, ETC.—

"(1) GENERAL RULE.—Under the regulations prescribed by the Secretary, if the employment of any qualified economically disadvantaged individual with respect to whom qualified wages are taken into account under subsection (a) is terminated by the taxpayer at any time during 270-day period beginning on the date such individual begins work for the employer, the tax under this chapter for the taxable year in which such employment is terminated shall be increased by an amount (determined under such regulations) equal to the credit allowed under subsection (a) for such taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to such employee.

"(2) SUBSECTION NOT TO APPLY IN CERTAIN CASES.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to—

"(i) a termination of employment of an employee who voluntarily leaves the employment of the employer.

"(ii) a termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the service of such employment, unless such disability is removed before the close of such period and the employer fails to offer reemployment to such individual,

"(iii) a termination of employment of an individual, if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual, or

"(iv) a termination of employment of an individual due to a substantial reduction in the trade or business operations of the employer.

"(B) CHANGE IN FORM OF BUSINESS, ETC.—For purposes of paragraph (1), the employment relationship between the employer and an employee shall not be treated as terminated—

"(i) by a transaction to which section 381(a) applies, if the employee continues to be employed by the acquiring corporation, or

"(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in such trade or business and the employer retains a substantial interest in such trade or business.

"(3) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart A.

"(k) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to prevent the abuse of such purposes by denying the credit allowable under this section to employers which relocate their businesses in an enterprise zone while displacing former employees or which otherwise conduct their businesses so as to take advantage of the credit allowable by this section without furthering such purposes."

(b) NO DEDUCTION ALLOWED.—Section 280C (relating to disallowance of deductions of certain expenses for which credits are allowable) is amended by adding at the end thereof the following new subsection:

"(c) RULE FOR SECTION 30 CREDITS.—No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable under section 30 (relating to the employment credit for enterprise zone businesses.) This subsection shall be applied under a rule similar to the rule under the last sentence of subsection (a)."

(c) TECHNICAL AMENDMENTS RELATED TO CARRYOVER AND CARRYBACK OF CREDITS.—

"(A) Subsection (c) of section 381 (relating to items of the distributor or transferor corporation) is amended by inserting after paragraph (25) the following new paragraph:

"(26) CREDIT UNDER SECTION 30.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 30, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 30 in respect to the distributor or transferor corporation."

(B) Paragraph (2) of section 383(a) is amended by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) unused enterprise zone employment credit under section 30,".

(2) CARRYBACK OF CREDIT.—

(A) Subparagraph (C) of section 6511(d)(4) (defining credit carryback) is amended by inserting "and any enterprise zone employment credit under section 30(b)" before the period at the end thereof.

(B) Subsection (a) of section 6411 (relating to tentative carryback and refund adjustments) is amended—

(i) by inserting "enterprise zone employment credit carryback," after "section 172(b)," in the first sentence, and

(ii) by striking so much of the second sentence as follows "the return for the taxable year" and inserting the following: "of the net operating loss, net capital loss, unused enterprise zone employment credit, or unused business credit from which the carryback results and within a period of 12 months after such taxable year (or, with respect to any portion of an enterprise zone employment credit carryback, or business credit carryback attributable to a net operating loss carryback or a net capital loss carryback from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year or, with respect to any portion of a business credit carryback attributable to a research credit carryback or an enterprise zone employment credit carryback from a subsequent taxable year within a period of 12 months from the end of such subsequent taxable year) in the manner and form required by regulations prescribed by the Secretary".

(C) Subsections (a)(1) and (b) of section 6411 are each amended by inserting "unused enterprise zone employment credit," after "net capital loss,".

(d) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by adding after the item relating to section 29 the following new item:

"Sec. 30. Credit for enterprise zone employment."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

**SEC. . CREDIT FOR ENTERPRISE ZONE EMPLOYEES.**

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to credits allowable), as amended by section , is amended by adding after section 30 the following new section:

**"SEC. 30A. CREDIT FOR ENTERPRISE ZONE EMPLOYEES.**

"(a) IN GENERAL.—In the case of a qualified employee, there is allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 5 percent of the qualified wages for the taxable year.

"(b) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED EMPLOYEE.—The term 'qualified employee' means an individual—

"(A) who is described in section 30(f)(1), and

"(B) who is not the employee of the Federal Government or any State or subdivision of a State.

"(2) QUALIFIED WAGES.—

"(A) IN GENERAL.—The term 'qualified wages' has the meaning given to 'wages' under subsection (b) of section 3306, attributable to services performed for an employer with respect to whom the employee is a qualified employee, in an amount which does not exceed 1½ times the dollar limitation specified in such subsection.

"(B) EXCEPTION.—The term 'qualified wages' does not include any compensation received from the Federal Government or any State or subdivision of a State.

"(3) ENTERPRISE ZONE.—The term 'enterprise zone' means any area with respect to which a designation as an enterprise zone is in effect under section 7881.

"(c) PHASEOUT OF CREDIT.—In determining the amount of the credit for the taxable year under subsection (a) with respect to qualified wages paid to qualified employees for services performed in an enterprise zone, the following percentages shall be substituted for '5 percent' in subsection (a):

"(1) 3¾ percent in the taxable year in which the date which is—

"(A) 21 years after the date on which such enterprise zone was designated under section 7881 occurs, or

"(B) if earlier, the date 4 years before the date the zone designation is to expire;

"(2) 2½ percent in the next succeeding taxable year;

"(3) 1¼ percent in the second next succeeding taxable year; and

"(4) zero thereafter.

"(d) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) for a

taxable year shall not exceed the excess (if any) of—

"(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 28, 29, and 30, over

"(2) the tentative minimum tax for the taxable year."

(b) CONFORMING AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by adding after the item relating to section 30 the following new item:

"Sec. 30A. Credit for enterprise zone employees."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years after December 31, 1989.

Subpart B—Credits for Investment in Tangible Property in Enterprise Zones

**SEC. . INVESTMENT TAX CREDIT FOR NEW ENTERPRISE ZONE CONSTRUCTION PROPERTY.**

(a) SECTION 38 PROPERTY.—Paragraph (1) of section 48(a) (defining section 38 property) is amended by striking out "or" at the end of subparagraph (F), by striking out the period at the end of subparagraph (G) and inserting in lieu thereof ", or", and by adding after subparagraph (G) the following new subparagraph:

"(H) new enterprise zone construction property (within the meaning of subsection (t)) which is not otherwise section 38 property."

(b) AMOUNT OF CREDIT.—

(1) IN GENERAL.—Subsection (a) of section 46 (relating to amount of investment tax credit) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(4) in the case of new enterprise zone construction property, the enterprise zone percentage."

(2) ENTERPRISE ZONE PERCENTAGE DEFINED.—Subsection (b) of section 46 is amended by adding at the end thereof the following new paragraph:

"(5) ENTERPRISE ZONE PERCENTAGE.—

"(A) IN GENERAL.—The enterprise zone percentage is 10 percent.

"(B) PHASEOUT OF CREDIT AS ENTERPISE ZONE ENDS.—Subparagraph (A) shall be applied by substituting the following percentages for 10 percent:

"(i) For the taxable year described in section 30(i)(1)(A)(i), 7.5.

"(ii) For the next succeeding taxable year, 5.

"(iii) For the second next succeeding taxable year, 2.5.

"(iv) For any subsequent taxable year, zero."

(3) CONFORMING AMENDMENT.—Section 48(o) (defining certain credits) is amended by adding at the end thereof the following new paragraph:

"(4) ENTERPRISE ZONE CREDIT.—The term 'enterprise zone credit' means that portion of the credit allowed by section 38 which is attributable to the enterprise zone percentage."

(c) DEFINITIONS.—Section 48 (relating to definitions and special rules) is amended by redesignating the subsection relating to cross reference as subsection (u) and by inserting after subsection (s) the following new subsection:

"(t) NEW ENTERPRISE ZONE CONSTRUCTION PROPERTY.—

"(1) IN GENERAL.—The term 'new enterprise zone construction property' means any section 1250 property which is—

"(A) located in an enterprise zone,

"(B) used by the taxpayer predominantly in the active conduct of a trade or business within an enterprise zone, and

"(C) either—

"(i) the construction, reconstruction, rehabilitation, renovation, expansion, or erection of which is completed by the taxpayer during the period the designation as a zone is in effect under section 7881, or

"(ii) acquired during such period if the original use of such property commences with the taxpayer and commences during such period.

"(2) SPECIAL RULES.—

"(A)(i) The term 'new enterprize zone construction property' shall not include property acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (determined as of the time the property is acquired by the taxpayer).

"(ii) For purposes of clause (i), a person (hereinafter in this clause referred to as the 'related person') is related to any other person if—

"(I) the related person bears a relationship to such other person specified in section 267(b) or 707(b)(1), or

"(II) the related person and such other person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

For purposes of subclause (I), '10 percent' shall be substituted for '50 percent' in applying sections 267(b)(1) and 767(b)(1). In the case of the acquisition of any property by any partnership which results from the termination of another partnership under section 708(b)(1)(B), the determination of whether the acquiring partnership is related to the other partnership shall be made immediately before the event resulting in such termination.

"(B) In applying section 46(c)(1)(A) in the case of property described in paragraph (1)(C)(i), there shall be taken into account only that portion of the basis which is properly attributable to construction or erection during such period.

"(3) REAL ESTATE RENTAL.—For purposes of this section, ownership of residential, commercial, or industrial real property within an enterprise zone for rental shall be treated as the active conduct of a trade or business in an enterprise zone."

(d) LODGING TO QUALIFY.—Paragraph (3) of section 48(a) (relating to property used for lodging) is amended—

(1) by striking out "and" at the end of subparagraph (C),

(2) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and," and

(3) by adding at the end thereof the following new subparagraph:

"(E) new enterprise zone construction property."

(e) RECAPTURE.—Subsection (a) of section 47 (relating to certain dispositions, etc., of section 38 property) is amended by adding at the end thereof the following new paragraph:

"(10) SPECIAL RULES FOR NEW ENTERPRISE ZONE CONSTRUCTION PROPERTY.—

"(A) IN GENERAL.—If, during any taxable year, property with respect to which the taxpayer claimed an enterprise zone credit is disposed of the tax under this chapter for such taxable year shall be increased by the amount described in subparagraph (B).

"(B) AMOUNT OF INCREASE.—The increase in tax under subparagraph (A) shall equal the aggregate decrease in the credits allowed under section 38 by reason of section 46(a)(4) for all prior taxable years which would have resulted solely from reducing the expenditures taken into account with respect to the property by an amount which bears the same ratio to such expenditures as the number of taxable years that the property was held by the taxpayer bears to the applicable recovery period for earnings and profits under section 312(k)."

(f) BASIS ADJUSTMENT TO REFLECT INVESTMENT CREDIT.—Paragraph (3) of section 48(q) (relating to basis adjustment to section 38 property) is amended to read as follows:

"(3) SPECIAL RULE FOR QUALIFIED REHABILITATION AND ENTERPRISE ZONE EXPENDITURES.—In the case of any credit determined under section 46(a) for—

"(A) any qualified rehabilitation expenditure in connection with a qualified rehabilitated building other than a certified historic structure, or

"(B) any expenditure in connection with new enterprise zone construction property (within the meaning of section 48(t)(1)),

paragraphs (1) and (2) of this subsection and paragraph (5) of subsection (d) shall be applied without regard to the phrase '50 percent of'."

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after December 31, 1988, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986.

Subpart C—Nonrecognition of Qualified Enterprise Zone Capital Gain Where Acquisition of Enterprise Zone Business Property

**SEC. . NONRECOGNITION OF QUALIFIED ENTERPRISE ZONE CAPITAL GAIN WHERE ACQUISITION OF ENTERPRISE ZONE BUSINESS PROPERTY.**

(a) IN GENERAL.—Part III of subchapter O of chapter 1 (relating to nontaxable exchanges) is amended by adding at the end thereof the following new section:

**"SEC. 1043. NONRECOGNITION OF CAPITAL GAIN WHERE ACQUISITION OF ENTERPRISE ZONE BUSINESS PROPERTY.**

"(a) NONRECOGNITION OF GAIN.—If—

"(1) any property is sold and there would (but for this section) be recognized gain with respect to such sale.

"(2) within the 1-year period beginning on the date of such sale qualified replacement property is acquired by the taxpayer, and

"(3) the taxpayer elects the application of this section with respect to such sale,

such gain from such sale shall be recognized only to the extent that the amount realized from such sale exceeds the cost to the taxpayer of such replacement property.

"(b) QUALIFIED REPLACEMENT PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifed replacement property' means—

"(A) any tangible personal property used predominantly in an enterprise zone in the active conduct of a trade or business within such enterprise zone,

"(B) any real property located in an enterprise zone used predominantly in the active conduct of a trade or business within such enterprise zone, and

"(C) any interest in a corporation, partnership, or other entity if, for the 3 most recent taxable years of such entity ending before the date of the purchase of such interest, such entity was a qualified business.

"(2) QUALIFIED BUSINESS.— The term 'qualified business' means any person—

"(A) which is actively engaged in the conduct of a trade or business within an enterprise zone during each of the 3 most recent taxable years of such entity ending before the date of sale of the interest,

"(B) with respect to which at least 80 percent of such person's gross receipts for the

taxable year are attributable to the active conduct of a trade or business within an enterprise zone, and

"(C) with substantially all of its tangible assets located within an enterprise zone.

"(3) REAL ESTATE RENTAL.—Ownership of residential, commercial, or industrial real property within an enterprise zone for rental shall be treated as the active conduct of a trade or business in an enterprise zone.

"(c) SPECIAL RULES.—For purposes of this section—

"(1) EXCHANGE TREATED AS SALE.—An exchange by the taxpayer of property for other property shall be treated as a sale of the first property, and the acquisition of any qualified replacement property on the exchange of property shall be treated as a purchase of such replacement property.

"(2) SECTION NOT TO APPLY TO ORDINARY INCOME.—Subsection (a) shall not apply to any gain to the extent such gain is treated as ordinary income under any provision of this chapter.

"(d) REDUCTION IN BASIS.—Where the purchase of any qualified replacement property results under subsection (a) in the nonrecognition of gain on the sale of any other property, the basis of such replacement property shall be reduced by an amount equal to the amount of gain not so recognized on the sale of such other property. Where the purchase of more than 1 qualified replacement property is taken into account in the nonrecognition under subsection (a) of gain on the sale of a property, the preceding sentence shall be applied to each such replacement property in the order in which such properties are purchased.

"(e) STATUTE OF LIMITATIONS.—If the taxpayer during any taxable year sells any property at a gain, then—

"(1) the statutory period for the assessment of any deficiency attributable to any part of such gain shall not expire before the expiration of the 3-year period beginning on the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

"(A) the taxpayer's cost of purchasing any qualified replacement property which the taxpayer claims results in nonrecognition of any part of such gain,

"(B) the taxpayer's intention not to purchase any such investment within the 1-year period described in subsection (a), or

"(C) the failure by the taxpayer to purchase any such replacement property within such period; and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment."

(b) HOLDING PERIOD.—Section 1223 (relating to holding period of property) is amended by redesignating paragraph (14) as paragraph (15) and by inserting after paragraph (13) the following new paragraph:

"(14) In determining the period for which the taxpayer has held any qualified replacement property the acquisition of which resulted under section 1043 in the nonrecognition of any part of the gain realized on the sale or exchange of any other property, there shall be included the period for which the property sold or exchanged had been held as of the date of such sale or exchange."

(c) BASIS ADJUSTMENT.—Subsection (a) of section 1016 (relating to adjustments to basis) is amended by striking out "and" at the end of paragraph (24), by striking out the period at the end of paragraph (25) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(26) in the case of any qualified replacement property the acquisition of which resulted under section 1043 in the nonrecognition of gain on the sale or exchange of other property, to the extent provided by section 1043(d)."

(d) CLERICAL AMENDMENT.—The table of sections of part III of subchapter O of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 1043. Nonrecognition of qualified enterprise zone capital gain where acquisition of enterprise zone business property."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales and exchanges after December 31, 1991, in taxable years ending after such date.

Subpart D—Deduction for Purchase of Enterprise Stock

**SEC. . DEDUCTION FOR PURCHASE OF ENTERPRISE STOCK.**

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

**"SEC. 197. DEDUCTION FOR PURCHASE OF ENTERPRISE STOCK.**

"(a) IN GENERAL.—At the election of the taxpayer, there shall be allowed as a deduction the aggregate amount paid during the taxable year for the purchase of enterprise stock on the original issue of such stock by a qualified issuer.

"(b) MAXIMUM DEDUCTION.—

"(1) IN GENERAL.—The maximum amount allowed as a deduction under subsection (a) to a taxpayer for the taxable year shall not exceed $100,000.

"(2) CONTROLLED GROUPS.—For purposes of paragraph (1), the taxpayer and all persons who are related persons with respect to the taxpayer shall be treated as 1 person, and the $100,000 amount in paragraph (1) shall be allocated among the taxpayer and such persons in proportion to their respective purchases of stock during the taxable year for which credit is allowable by this section.

"(3) ALLOCATION OF DEDUCTION WHERE MORE THAN $100,000 OF STOCK PURCHASED.—If the amount of stock purchased by any person exceeds the limitation under this subsection with respect to such person, the deduction allowed under this section shall be allocated pro rata among the stock so purchased in accordance with the purchase price per share.

"(c) DISPOSITIONS OF STOCK.

"(1) GAIN TREATED AS ORDINARY INCOME.—If any enterprise stock with respect to which a deduction was allowed under this section is disposed of by the taxpayer, then the lesser of—

"(A) the excess of—

"(i)(I) in the case of a sale or exchange, the amount realized, or

"(II) in the case of any other disposition, the fair market value of the stock, over

"(ii) the adjusted basis of such stock, or

"(B) the amount of the deduction allowed under this section with respect to such stock,

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

"(2) INTEREST CHARGED IF DISPOSITION WITHIN 3 YEARS OF PURCHASE.—

"(A) IN GENERAL.—If any enterprise stock is disposed of before the end of the 3-year period beginning on the date such stock was purchased by the taxpayer, the tax imposed by this chapter for the taxable year in which such disposition occurs shall be increased by the enterprise stock recapture amount.

"(B) ENTERPRISE STOCK RECAPTURE AMOUNT.—For purposes of subparagraph (A), the term 'enterprise stock recapture amount' means an amount equal to the amount of interest (determined at the rate applicable under section 6621) which would accrue—

"(i) during the period beginning on the date such stock was purchased by the taxpayer and ending on the date such stock was disposed of by the taxpayer,

"(ii) on the aggregate decrease in tax of the taxpayer resulting from the deduction allowed under this section with respect to the stock so disposed of.

"(d) TREATMENT WHERE ISSUER CEASES TO BE QUALIFIED.—

"(1) IN GENERAL.—IF—

"(A) any qualified issuer with respect to the stock of which any taxpayer has made an election under this section ceases to meet the requirements of subsection (e)(2)(A)(i), (iii), or (iv), and

"(B) such cessation occurs at any time before the close of the 5th taxable year ending after the date such stock was issued,

the tax treatment described in paragraph (2) shall apply to the taxable year of the taxpayer in which such cessation occurs.

"(2) TAX TREATMENT OF TAXPAYER.—The tax treatment described in this paragraph for any taxable year is—

"(A) the taxpayer shall include in income as ordinary income the amount of the deduction allowed under this section with respect to such stock,

"(B) the tax imposed by this chapter for such taxable year shall be increased by an amount equal to the amount of interest (determined at the rate applicable under section 6621) which would accrue—

"(i) during the period beginning on the date such stock was purchased by the taxpayer and ending on the disqualification date,

"(ii) on the aggregate decrease in tax of the taxpayer resulting from the deduction allowed under this section with respect to the stock.

"(3) DISQUALIFICATION DATE.—For purposes of paragraph (2), the term 'disqualification date' means the earlier of—

"(A) the date of the issuance by the qualified issuer (or any related person with respect to such issuer) of any regulated security, or

"(B) the last day of the taxable year of the qualified issuer in which the requirements of subsection (e)(2)(A)(i) or (iv) ceased to be met.

"(e) DEFINITIONS.—For purposes of this section—

"(1) ENTERPRISE STOCK.—The term 'enterprise stock' means common stock issued by a qualified issuer but only if the proceeds of such issue are used by such issuer in the conduct of a qualified business (as defined in section 1043(b)(3)(B)).

"(2) QUALIFIED ISSUER.—

"(A) IN GENERAL.—The term 'qualified issuer' means any C corporation which, at the time of issuance of the stock involved—

"(i) is conducting a qualified business described in section 1043(b)(3)(B),

"(ii) does not have a net worth (either before or immediately after the issuance of the stock involved) exceeding $2,000,000,

"(iii) has not had at any time during the 5-year testing period any outstanding regulated securities issued by such corporation, and

"(iv) has derived during the testing period more than 50 percent of its gross receipts during such period from sources other than royalties, rents (other than rents from real estate described in section 1043(b)(3)(C)), dividends, interest, annuities, and sales and exchanges of stock or securities.

"(B) RELATED PERSONS TAKEN INTO ACCOUNT IN CERTAIN CASES.—For purposes of clauses (ii) and (iii) of subparagraph (A), the issuer and all persons who are related persons with respect to such issuer shall be treated as 1 person.

"(C) TESTING PERIOD.—For purposes of subparagraph (A), the term 'testing period' means the period beginning on the first day of the 5th taxable year beginning before the issuance of the stock involved and ending on the date of such issuance.

"(3) REGULATED SECURITIES.—The term 'regulated securities' means any security—

"(A) registered on a national exchange under section 12(b) of the Securities Exchange Act of 1934, or

"(B) registered (or required to be registered) under section 12(g) of such Act (determined without regard to section 12(g)(2) of such Act).

"(4) RELATED PERSON.—A person is a related person to another person if—

"(A) such persons are treated as a single employer under subsections (a) and (b) of section 52, or

"(B) in the case of individuals, such persons are husband and wife.

"(f) SPECIAL RULES.—

"(1) AMOUNT PAID AFTER CLOSE OF TAXABLE YEAR.—An amount paid after the close of the taxable year for the purchase of enterprise stock shall be treated for purposes of subsection (a) as paid during such year if—

"(A) such amount is so paid not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof), and

"(B) the taxpayer was under a binding contract as of the close of such taxable year to purchase such stock.

"(2) LIMITATION ON AMOUNT OF DEDUCTION.—If—

"(A) any enterprise stock is issued in exchange for property,

"(B) the basis of such stock in the hands of the taxpayer is determined by reference to the basis of such property, and

"(C) the adjusted basis (for determining gain) of such property immediately before the exchange exceeded its fair market value at such time, then the deduction under this section, and such adjusted basis, shall both be reduced by the excess described in subparagraph (C).

"(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a deduction is allowed under this section with respect to the purchase of any stock, the basis of such stock (without regard to this subsection) shall be reduced by the amount of the deduction allowed with respect to the purchase of such stock."

(b) TECHNICAL AMENDMENT.—Subsection (a) of section 1016 (relating to adjustments to basis), as amended by this title is amended by striking out "and" at the end of paragraph (25), by striking out the period at the end of paragraph (26) and inserting in lieu thereof ", and ", and by adding at the end thereof the following new paragraph:

"(27) to the extent provided in section 197(g), in the case of stock with respect to which a deduction was allowed under section 197."

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 197. Deduction of purchase of enterprise stock."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to stock purchased after December 31, 1991.

Subpart E—Rules Relating to Private Activity Bonds

**SEC. . PRIVATE ACTIVITY BONDS.**

(a) LIMITATION ON ACCELERATED COST RECOVERY DEDUCTION NOT TO APPLY TO ENTERPRISE ZONE PROPERTY.—Subparagraph (C) of section 168(g)(5) (relating to limitations on property financed with tax-exempt bonds) is amended to read as follows:

"(C) EXCEPTIONS.—Subparagraph (A) shall not apply to any which is placed in service—

"(i) in connection with any qualified residential rental project (within the meaning of section 142(a)(7)), or

"(ii) as new enterprise zone construction property (within the meaning of section 48(t))."

(b) TERMINATION OF SMALL ISSUE EXEMPTION NOT TO APPLY.—Paragraph 12 of section 142(a) (relating to termination of small issue exemption) is amended by adding at the end thereof the following new subparagraph:

"(D) ENTERPRISE ZONE FACILITIES.—This paragraph shall not apply to any obligation which is part of an issue substantially all of the proceeds of which are used to finance facilities within an enterprise zone if such facilities are placed in service while the designation as such a zone is in effect under section 7881."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 1991, in taxable years ending after such date.

Subpart F—Ordinary Loss Deduction for Securities of Enterprise Zone Business Which Become Worthless

**SEC. . ORDINARY LOSS DEDUCTION ALLOWED FOR SECURITIES OF ENTERPRISE ZONE BUSINESS WHICH BECOME WORTHLESS.**

(a) GENERAL RULE.—Subsection (g) of section 165 (relating to losses) is amended by adding at the end thereof the following new paragarph:

"(4) SECURITIES OF ENTERPRISE ZONE BUSINESS.—If any security of a qualified business (as defined in section 1043(b)) which is a capital asset becomes worthless during the taxable year—

"(A) paragraph (1) shall not apply, and

"(B) the loss resulting therefrom shall, for purposes of this subtitle, be treated as a loss from the sale or exchange, on the last day of the taxable year, of property which is not a capital asset."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to losses sustained after December 31, 1991, in taxable years ending after such date.

Subpart G—Increase in Research Credit for Research Conducted in Enterprise Zones

**SEC. . INCREASE IN RESEARCH CREDIT FOR RESEARCH CONDUCTED IN ENTERPRISE ZONES.**

(a) IN GENERAL.—Section 41 (relating to credit for increasing research activities) is amended by adding at the end thereof the following new subsection:

"(i) INCREASE IN CREDIT FOR RESEARCH CONDUCTED IN ENTERPRISE ZONE.—Subsection (a)(1) shall be applied by substituting '37½ percent' for '20 percent' with respect to the lesser of—

"(1) the excess described in subsection (a)(1), or

"(2) the excess which would be described in subsection (a) if only research conducted in enterprise zones were taken into account.

For purposes of paragraph (2), an area shall be treated as an enterprise zone for a base period with respect to a taxable year if such area is designated as an enterprise zone for such taxable year."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991 and to base periods with respect to such taxable years.

Subpart H—Sense of the Congress With Respect to Tax Simplification

**SEC. . TAX SIMPLIFICATION.**

It is the sense of the Congress that the Secretary of the Treasury should in every way possible simplify the administration and enforcement of any provision of the Internal Revenue Code of 1986 added to, or amended by, this Act.

Subpart I—Regulations

**SEC. . REGULATIONS.**

The Secretary of the Treasury or his delegate shall issue such regulations as may be necessary to carry out the amendments made by this title not later than 6 months after the date of the enactment of this Act.

PART III—REGULATORY FLEXIBILITY

**SEC. . DEFINITION OF SMALL ENTITIES IN ENTERPRISE ZONES FOR PURPOSES OF ANALYSIS OR REGULATORY FUNCTIONS.**

Section 601 of title 5, United States Code, is amended—

(1) by striking "and" at the end of paragraph (5); and

(2) by striking paragraph (6) and inserting in lieu thereof the following:

"(6) the term 'small entity' means—

"(A) a small business, small organization, or small governmental jurisdiction within the meaning of paragraphs (3), (4), and (5) of this section, respectively; and

"(B) any qualified business; any governments which designated and approved an area which has been designated as an enterprise zone (within the meaning of section 7881 of the Internal Revenue Code of 1986) to the extent any rule pertains to the carrying out of projects, activities, or undertakings within such zone; and any not-for-profit enterprise carrying out a significant portion of its activities within such a zone; and

"(7) the term 'qualified business' means any person, corporation, or other entity—

"(A) which is engaged in the active conduct of a trade or business within an enterprise zone (within the meaning of section 7881 of the Internal Revenue Code of 1986); and

"(B) for whom at least 50 percent of its employees are qualified employees (within the meaning of section 30(f) of such Code)."

**SEC. . WAIVER OR MODIFICATION OF AGENCY RULES IN ENTERPRISE ZONES.**

(a) Chapter 6 of title 5, United States Code, is amended by redesignating sections 611 and 612 as sections 612 and 613, respectively, and inserting the following new section immediately after section 610:

**"§611. Waiver or modification of agency rules in enterprise zones**

"(a) Upon the written request of the governments which designated and approved an area which has been designated as an enterprise zone under section 7881 of the Internal Revenue Code of 1986, an agency is authorized, in order to further the job creation, community development, or economic revitalization objectives of the zone, to wavie or

modify all or part of any rule which it has authority to promulgate, as such rule pertains to the carrying out of projects, activities, or undertakings within the zone.

"(b) Nothing in this section shall authorize an agency to waive or modify any rule adopted to carry out a statute or Executive order which prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, sex, marital status, national origin, age, or handicap.

"(c) A request under subsection (a) shall specify the rule or rules to be waived or modified and the change proposed, and shall briefly describe why the change would promote the achievement of the job creation, community development, or economic revitalization objectives of the enterprise zone. If a request is made to an agency other than the Department of Housing and Urban Development, the requesting governments shall send a copy of the request to the Secretary of Housing and Urban Development at the time the request is made.

"(d) In considering a request, the agency shall weigh the extent to which the proposed change is likely to further job creation, community development, or economic revitalization within the enterprise zone against the effect the change is likely to have on the underlying purposes of applicable statutes in the geographic area which would be affected by the change. The agency shall approve the request whenever it finds, in its discretion, that the public interest which the proposed change would serve in furthering such job creation, community development or economic revitalization outweighs the public interest which continuation of the rule unchanged would serve in furthering such underlying purposes. The agency shall not approve any request to waive or modify a rule if that waiver or modification would—

"(1) directly violate a statutory requirement (including any requirement of the Fair Labor Standards Act of 1938 (52 Stat. 1060; 29 U.S.C. 201 et seq.)); or

"(2) be likely to present a significant risk to the public health, including environmental health or safety, such as a rule with respect to occupational safety or health, or environmental pollution.

"(e) If a request is disapproved, the agency shall inform the requesting governments in writing of the reasons therefor and shall, to the maximum extent possible, work with such governments to develop an alternative, consistent with the standards contained in subsection (d).

"(f) Agencies shall discharge their responsibilities under this section in an expeditious manner, and shall make a determination on requests not later than 90 days after their receipt.

"(g) A waiver or modification of a rule under subsection (a) shall not be considered to be a rule, rulemaking, or regulation under chapter 5 of this title. To facilitate reaching its decision on any requested waiver or modification, the agency may seek the views of interested parties and, if the views are to be sought, determine how they should be obtained and to what extent, if any, they should be taken into account in considering the request. The agency shall publish a notice in the Federal Register stating any waiver or modification of a rule under this section.

"(h) In the event that an agency proposes to amend a rule for which a waiver or modification under this section is in effect, the agency shall not change the waiver or modification to impose additional requirements unless it determines, consistent with standards contained in subsection (d), that such action is necessary.

"(i) No waiver or modification of a rule under this section shall remain in effect for a longer period than the period for which the enterprise zone designation remains in effect for the area in which the waiver or modification applies.

"(j) For purposes of this section, the term 'rule' means (1) any rule as defined in section 551(4) of this title or (2) any rulemaking conducted on the record after opportunity for an agency hearing pursuant to sections 556 and 557 of this title."

(b) The table of sections for such chapter is amended by redesignating "611." and "612." as "612." and "613.", respectively, and inserting the following new item immediately after "610.":

"611. Waiver or modification of agency rules in enterprise zones."

(c) Section 601(2) of such title is amended by inserting "(except for purposes of section 611)" immediately before "means."

(d) Section 613 of such title, redesignated by subsection (a) of this section, is amended by—

(1) inserting "except section 611)" immediately after "chapter" in subsection (a); and

(2) inserting "as defined in section 601(2)" immediately before the period at the end of the first sentence of subsection (b).

**SEC. . COORDINATION OF HOUSING AND URBAN DEVELOPMENT PROGRAMS IN ENTERPRISE ZONES.**

Section 3 of the Department of Housing and Urban Development Act is amended by adding at the end thereof the following new subsection:

"(d) The Secretary of Housing and Urban Development shall—

"(1) promote the coordination of all programs under his jurisdiction which are carried on within an enterprise zone designated pursuant to 7881 of the Internal Revenue Code of 1986;

"(2) expedite, to the greatest extent possible, the consideration of applications for programs referred to in paragraph (1) through the consolidation or forms or otherwise; and

"(3) provide, whenever possible, for the consolidation of periodic reports required under programs referred to in paragraph (1) into one summary report submitted at such intervals as may be designated by the Secretary."

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## METZENBAUM AMENDMENT NO. 1014

(Ordered to lie on the table.)

Mr. Metzenbaum submitted an amendment intended to be proposed by him to the bill S. 1554, supra, as follows:

At the end of the bill, add the following section:

**SEC. . AMENDMENTS TO THE RAILROAD UNEMPLOYMENT INSURANCE ACT.**

(a) IN GENERAL.—Section 2(h) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(h)) is amended by striking paragraphs (2) and (3) and inserting the following:

"(2) For purposes of subdivision (1) of this subsection, a 'period of high unemployment' shall begin on the 20th calendar day after a period of 3 consecutive calendar months, in which for each such month the rate of railroad unemployment (seasonally adjusted) equals or exceeds 4.5 percent and shall end on the 20th calendar day after a period of 3 consecutive calendar months, in which for each such month the rate of railroad unemployment (seasonally adjusted) is less than 4.5 percent.

"(3)(A) For purposes of subdivision (2) of this Subsection, the term 'rate or railroad unemployment' for a month means the percentage determined by dividing—

"(i)(I) the average weekly number of individuals who filed bona fide claims for benefits for days of unemployment in such month, plus

"(II) the number of individuals (other than those included in subclause (I) who have exhausted benefits for days of unemployment in the current or immediately preceding benefit year, by

"(ii) the average mid-youth count of employees of class I railroads and class I switching and terminal companies, as reported to the Interstate Commerce Commission, adjusted, as determined by the Board, to include all employees covered by this Act for the 12 months ending with the second calendar quarter preceding such month.

"(B) For purposes of subparagraph (A)(i)(I), the average weekly number of individuals filing bona fide claims for benefits shall not include individuals whose unemployment is due to a stoppage of work because of a strike, lockout, or other labor dispute in the establishment, premises, or enterprise at which such individual was last employed.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to weeks of unemployment beginning on or after July 1, 1991.

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## KENNEDY AMENDMENT NO. 1015

(Ordered to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 1554, supra, as follows:

Chapter 23, Federal Unemployment Tax Act, Section 3302(c)(2)(A)(i) is amended to read as follows:

Strike the words "second consecutive January 1" and insert therein "fifth consecutive January 1".

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## FOWLER AMENDMENT NO. 1016

(Ordered to lie on the table.)

Mr. FOWLER submitted an amendment intended to be proposed by him to the bill S. 1554, supra; as follows:

On page 30, line 5, strike "(A)".

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# NATIONAL DEFENSE AUTHORIZATION ACT, FISCAL YEARS 1992 AND 1993

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## LEAHY (AND OTHERS) AMENDMENT NO. 1017

Mr. LEAHY (for himself, Mr. COHEN, Mr. GLENN, and Mr. MCCAIN) proposed an amendment to the bill S. 1507, supra, as follows:

On page 22, strike out line 1 and all that follows through page 23, line 14, and insert in lieu thereof the following:

**SEC. 118. TERMINATION OF NEW PRODUCTION OF B–2 AIRCRAFT.**

(a) REDUCED AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 103(1)(A), the amount authorized to be appropriated for the Air Force for fiscal year 1992 for the procurement of aircraft is $7,463,539,000.

(b) PRODUCTION TERMINATION.—Funds appropriated for the Department of Defense for fiscal years after fiscal year 1991 may not be obligated or expended to commence production of any B–2 aircraft.

(c) AUTHORIZED SCOPE OF B–2 PROGRAM.—Amounts appropriated for the Department of Defense may be expended for the B–2 aircraft program only—

(1) for the completion of production of those B–2 aircraft for which production was commenced with funds appropriated for a fiscal year before fiscal year 1992; and

(2) for research, development, test, and evaluation, including flight testing.

## EMERGENCY UNEMPLOYMENT COMPENSATION ACT

### DOLE (AND OTHERS) AMENDMENT NO. 1018

Mr. DOLE (for himself, Mr. SIMPSON, and Mr. DOMENICI) proposed an amendment to the bill S. 1554, supra, as follows:

In lieu of the language proposed to be inserted insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Emergency Unemployment Compensation Act of 1991".

**SEC. 2. FEDERAL-STATE AGREEMENTS.**

(a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this Act with the Secretary of Labor (hereafter in this Act referred to as the "Secretary"). Any State which is a party to an agreement under this Act may, upon providing 30 days written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF AGREEMENT.—Any agreement under subsection (a) shall provide that the State agency of the State will make payments of emergency unemployment compensation—

(1) to individuals who—

(A) have exhausted all rights to regular compensation under the State law;

(B) have no rights to compensation (including both regular compensation and extended compensation) with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law (and are not paid or entitled to be paid any additional compensation under any State or Federal law); and

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(2) for any week of unemployment which begins in the individual's period of eligibility (as defined in section 7(2)).

(c) EXHAUSTION OF BENEFITS.—For purposes of subsection (b)(1)(A), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

(2) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(d) WEEKLY BENEFIT AMOUNT.—For purposes of any agreement under this Act—

(1) the amount of emergency unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependent's allowances) payable to such individual during such individual's benefit year under the State law for a week of total unemployment;

(2) the terms and conditions of the State law which apply to claims for extended compensation and to the payment thereof shall apply to claims for emergency unemployment compensation and the payment thereof, except where inconsistent with the provisions of this Act, or with the regulations or operating instructions of the Secretary promulgated to carry out this Act; and

(3) the maximum amount of emergency unemployment compensation payable to any individual for whom an account is established under section 3 shall not exceed the amount established in such account for such individual.

**SEC. 3. EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT.**

(a) IN GENERAL.—Any agreement under this Act shall provide that the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment compensation account with respect to such individual's benefit year.

(b) AMOUNT IN ACCOUNT.—

(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

(A) 100 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which the individual most recently received regular compensation, or

(B) the applicable limit times the individual's average weekly benefit amount for the benefit year.

(2) APPLICABLE LIMIT.—For purposes of this section—

(A) IN GENERAL.—Except as provided in this paragraph, the applicable limit shall be determined under the following table:

| In the case of weeks beginning during a: | The applicable limit is: |
|---|---|
| 6-percent period ..... | 10 |
| Other period ..... | 5. |

(B) APPLICABLE LIMIT NOT REDUCED.—An individual's applicable limit for any week shall in no event be less than the highest applicable limit in effect for any prior week for which emergency unemployment compensation was payable to the individual from the account involved.

(C) INCREASE IN APPLICABLE LIMIT.—If the applicable limit in effect for any week is higher than the applicable limit for any prior week, the applicable limit shall be the higher applicable limit, reduced (but not below zero) by the number of prior weeks for which emergency unemployment compensation was paid to the individual from the account involved.

(3) REDUCTION FOR EXTENDED BENEFITS.—The amount in an account under paragraph (1) shall be reduced (but not below zero) by the aggregate amount of extended compensation (if any) received by such individual relating to the same benefit year under the Federal-State Extended Unemployment Compensation Act of 1970.

(4) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

(c) DETERMINATION OF PERIODS.—

(1) IN GENERAL.—For purposes of this section, the terms "6-percent period" and "other period" mean, with respect to any State, the period which—

(A) begins with the third week after the first week for which the applicable trigger is on, and

(B) ends with the third week after the first week for which the applicable trigger is off.

(2) APPLICABLE TRIGGER.—In the case of a 6-percent period or other period, as the case may be, the applicable trigger is on for any week with respect to any such period if the adjusted rate of insured unemployment in the State for the period consisting of such week and the immediately preceding 12 weeks falls within the applicable range.

(3) APPLICABLE RANGE.—For purposes of this subsection, the applicable range is as follows:

| In the case of a: | The applicable range is: |
|---|---|
| 6-percent period ..... | A rate equal to or exceeding 6 percent. |
| Other period ..... | A rate less than 6 percent. |

(4) SPECIAL RULES FOR DETERMINING PERIODS.—

(A) MINIMUM PERIOD.—Except as provided in subparagraph (B), if for any week beginning after August 31, 1991, a 6-percent period or other period, as the case may be, is triggered on with respect to such State, such period shall last for not less than 13 weeks.

(B) EXCEPTION IF APPLICABLE RANGE INCREASES.—If, but for subparagraph (A), another period with a higher applicable range would be in effect for a State, such other period shall be in effect without regard to subparagraph (A).

(5) NOTIFICATION BY SECRETARY.—When a determination has been made that a 6-percent period or other period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no emergency unemployment compensation shall be payable to any individual under this Act for any week—

(A) beginning before the later of—

(i) September 1, 1991, or

(ii) the first week following the week in which an agreement under this Act is entered into, or

(B) beginning after May 31, 1992.

(2) TRANSITION.—In the case of an individual who is receiving emergency unemployment compensation for a week which includes May 31, 1992, such compensation shall continue to be payable to such individual in accordance with subsection (b) for any week beginning in a period of consecutive weeks for each of which the individual meets the eligibility requirements of this Act.

(3) REACHBACK PROVISIONS.—(A) IN GENERAL.—If—

(i) any individual exhausted such individual's rights to regular compensation (or extended compensation) under the State law after March 31, 1991, and before the first week following August 31, 1991 (or, if later, the week following the week in which the agreement under this Act is entered into), and

(ii) a 6-percent period, as described in subsection (c), is in effect with respect to the State for the first week following August 31, 1991,

such individual shall be entitled to emergency unemployment compensation under this Act in the same manner as if such individual's benefit year ended no earlier than the last day of such following week.

(B) LIMITATION OF BENEFITS.—In the case of an individual who has exhausted such individual's rights to both regular and extended compensation, any emergency unemployment compensation payable under subparagraph (A) shall be reduced in accordance with subsection (b)(3).

**SEC. 4. PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF EMERGENCY UNEMPLOYMENT COMPENSATION.**

(a) GENERAL RULE.—There shall be paid to each State which has entered into an agreement under this Act an amount equal to 100 percent of the emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

(b) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this Act or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this Act in respect of such compensation.

(c) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this Act shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this Act for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

**SEC. 5. FINANCING PROVISIONS.**

(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this Act.

(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this Act. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as established by section 905 of the Social Security Act) to the account of such State in the Unemployment Trust Fund.

(c) ASSISTANCE TO STATES.—There are hereby authorized to be appropriated without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act) in meeting the costs of administration of agreements under this Act.

**SEC. 6. FRAUD AND OVERPAYMENTS.**

(a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of emergency unemployment compensation under this Act to which he was not entitled, such individual—

(1) shall be ineligible for further emergency unemployment compensation under this Act in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

(b) REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment compensation under this Act to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(1) the payment of such emergency unemployment compensation was without fault on the part of any such individual, and

(2) such repayment would be contrary to equity and good conscience.

(c) RECOVERY BY STATE AGENCY.—

(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any emergency unemployment compensation payable to such individual under this Act or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the emergency unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

**SEC. 7. DEFINITIONS.**

For purposes of this Act:

(1) IN GENERAL.—The terms "compensation", "regular compensation", "extended compensation", "additional compensation", "benefit year", "base period", "State", "State agency", "State law", and "week" have the meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

(2) ELIGIBILITY PERIOD.—An individual's eligibility period shall consist of the weeks in the individual's benefit year which begin in a 6-percent period or other period under this Act and, if the individual's benefit year ends within any such period, any weeks thereafter which begin in any such period. In no event shall an individual's period of eligibility include any weeks after the 26th week after the end of the benefit year for which the individual exhausted his rights to regular compensation or extended compensation.

(3) ADJUSTED RATE OF INSURED UNEMPLOYMENT.—The adjusted rate of insured unemployment shall be determined in the same manner as the rate of insured unemployment is determined under section 203 of the Federal-State Extended Unemployment Compensation Act of 1970, except that the total number of individuals exhausting rights to regular compensation for the most recent three months for which data are available shall be included in such determination in the same manner as the average weekly number of individuals filing claims for regular compensation.

**SEC. 8. PAYMENTS OF UNEMPLOYMENT COMPENSATION TO FORMER MEMBERS OF THE ARMED FORCES.**

(a) REDUCTION IN LENGTH OF REQUIRED ACTIVE DUTY FOR DESERT STORM RESERVISTS.—Section 8521 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) In the case of a member of the armed forces who served on active duty in the Persian Gulf area of operations in connection with Operation Desert Storm, paragraph (1) of subsection (a) shall be applied by substituting '90 days' for '180 days'.

"(2) For purposes of paragraph (1), the term 'Operation Desert Storm' has the meaning given the term in section 3(1) of Public Law 102-25 (105 Stat. 77).".

(b) LIMITATIONS ON UNEMPLOYMENT COMPENSATION.—Subsection (a)(1) of section 8521 of title 5, United States Code, is amended by striking subparagraphs (A) and (B) and inserting the following new subparagraphs:

"(A) The individual was—

"(i) involuntarily separated from the armed forces, or

"(ii) separated from the armed forces after being retained on active duty pursuant to section 673C or 676 of title 10, United States Code.

"(B) This paragraph does not apply in the case of a dismissal, dishonorable discharge, or bad conduct discharge adjudged by a court-martial or a discharge under other than honorable conditions (as defined in regulations prescribed by the Secretary of the military department concerned).".

(c) CONFORMING AMENDMENT.—Subsection (c) of section 8521 of such title is hereby repealed.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to weeks of unemployment beginning on or after August 31, 1991.

## TITLE II—PERMANENT EXTENSION OF PROVISIONS RELATING TO COLLECTION OF NONTAX DEBTS OWED TO FEDERAL AGENCIES

Sec. 201 (a) General Rule—Subsection (c) of section 2653 of the Deficit Reduction Act of 1984 is amended by striking "on or before January 10, 1994".

(b) The amendments made by this subsection shall take effect on October 1, 1991.

## TITLE III—GUARANTEED STUDENT LOANS

### CREDIT CHECKS; COSIGNERS

Sec. 301. (a) Section 427(a)(2)(A) of the Higher Education Act (hereafter referred to as the "Act") is amended to read as follows:

"(A) is made without security and without endorsement, except that prior to making a loan insurable by the Secretary under this part a lender shall—

"(i) obtain a credit report, from at least one national credit bureau organization, with respect to a loan applicant who will be at least 21 years of age as of July 1 of the award year for which assistance is being sought, for which the lender may charge the applicant an amount not to exceed the lesser

of $25 or the actual cost of obtaining the credit report; and

"(ii) require an applicant of the age specified in clause (i) who, in the judgment of the lender in accordance with the regulations of the Secretary, has an adverse credit history, to obtain a credit worthy cosigner in order to obtain the loan, provided that, for purposes of this clause, an insufficient or nonexistent credit history may not be considered to be an adverse credit history;".

(b) Section 428(b)(1) of the Act is further amended—

(1) in subparagraph (V) (as amended by section 433), by striking out "and" at the end thereof:

(2) in subparagraph (W) (as amended by section 433), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new subparagraph:

"(X) provides that prior to making a loan made, insured, or guaranteed under this part (other than a loan made in accordance with section 428C), a lender shall—

"(i) obtain a credit report, from at least one national credit bureau organization, with respect to a loan applicant who will be at least 21 years of age as of July 1 of the award year for which assistance is being sought, for which the lender may charge the applicant an amount not to exceed the lesser of $25 or the actual cost of obtaining the credit report; and

"(ii) require an applicant of the age specified in clause (i) who, in the judgment of the lender in accordance with the regulations of the Secretary, has an adverse credit history, to obtain a credit worthy cosigner in order to obtain the loan, provided that, for purposes of this clause, an insufficient or nonexistent credit history may not be considered to be an adverse credit history.".

SEC. 302. (a) Section 427 of the Act is amended by adding at the end thereof the following new section:

"(d) BORROWER INFORMATION.—The lender shall obtain the borrower's driver's license number, if any, at the time of application for the loan.".

(b) Section 428 of the Act is further amended—

(1) in subsection (a)(2)(A)—

(A) in clause (i)(I), by striking out "and" at the end thereof;

(B) in clause (ii), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(C) by adding at the end thereof the following new clause:

"(iii) have provided to the lender at the time of application for a loan made, insured, or guaranteed under this part, the student's driver's number, if any."

BORROWER INFORMATION

SEC. 303. Section 485(b) of the Act is amended—

"(1) by amending the subsection heading to read as follows: "EXIT COUNSELING FOR BORROWERS; BORROWER INFORMATION.—"; and

(2) by adding at the end thereof the following: "Each eligible institution shall require that the borrower of a loan made under part B, part D, or part E submit to the institution, during the exit interview required by this subsection, the borrower's expected permanent address after leaving the institution, regardless of the reason for leaving; the name and address of the borrower's expected employer after leaving the institution; and the address of the borrower's next of kin. In the case of a loan made under part B, the institution shall then submit this information to the holder of the loan.".

SEC. 304. Section 428 of the Act is further amended by adding at the end thereof the following new subparagagph:

"(W) provides that the lender shall obtain, as part of the note or written agreement evidencing the loan, the borrower's authorization for entry of judgment against the borrower in the event of default.".

WAGE GARNISHMENT

SEC. 305. (a) Part G of title IV of the Act is further amended by inserting immediately following section 488 the following new section:

"WAGE GARNISHMENT REQUIREMENT

"SEC. 488A. (a) GARNISHMENT REQUIREMENTS.—Notwithstanding any provision of State law, a guaranty agency, or the Secretary in the case of loans made, insured or guaranteed under this title that are held by the Secretary, may garnish the disposable pay of an individual to collect the amount owed by the individual, if he or she is not currently making required repayment under a repayment agreement with the Secretary, or, in the case of a loan guaranteed under part B on which the guaranty agency received reimbursement from the Secretary under section 428(c), with the guaranty agency holding the loan, as appropriate, provided that—

"(1) the amount deducted for any pay period may not exceed 10 percent of disposable pay, except that a greater percentage may be deducted with the written consent of the individual involved;

"(2) the individual shall be provided written notice, sent by mail to the individual's last known address, a minimum of 30 days prior to the initiation of proceedings, from the guaranty agency or the Secretary, as appropriate, informing such individual of the nature and amount of the loan obligation to be collected, the intention of the guaranty agency or the Secretary, as appropriate, to initiate proceedings to collect the debt through deductions from pay, and an explanation of the rights of the individual under this section;

"(3) the individual shall be provided an opportunity to inspect and copy records relating to the debt;

"(4) the individual shall be provided an opportunity to enter into a written agreement with the guaranty agency or the Secretary, under terms agreeable to the Secretary, or the head of the guaranty agency or his designee, as appropriate, to establish a schedule for the repayment of the debt;

"(5) the individual shall be provided an opportunity for a hearing in accordance with subsection (b) on the determination of the Secretary or the guaranty agency, as appropriate, concerning the existence or the amount of the debt, and, in the case of an individual whose repayment schedule is established other than by a written agreement pursuant to paragraph (4), concerning the terms of the repayment schedule;

"(6) the employer shall pay to the Secretary or the guaranty agency as directed in the withholding order issued in this action, and shall be liable for, and the Secretary or the guaranty agency, as appropriate, may sue the employer in a State or Federal court of competent jurisdiction to recover, any amount that such employer fails to withhold from wages due an employee following receipt of such employer of notice of the withholding order, plus attorneys' fees, costs, and, in the court's discretion, punitive damages, but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph; and

"(7) an employer may not discharge from employment, refuse to employ, or take disiplinary action against an individual subject to wage withholding in accordance with this section by reason of the fact that the individual's wages have been subject to garnishment under this section, and such individual may sue in a State or Federal court of competent jurisdiction any employer who takes such action. The court shall award attorneys' fees to a prevailing employee and, in its discretion, may order reinstatement of the individual, award punitive damages and back pay to the employee, or order such other remedy as may be reasonably necessary.

"(b) HEARING REQUIREMENTS.—A hearing decribed in subsection (a)(5) shall be provided prior to issuance of a garnishment order if the individual, on or before the 15th day following the mailing of the notice described in subsection (a)(2), and in accordance with such procedures as the Secretary or the head of the guaranty agency, as appropriate, may prescribe, files a petition requesting such a hearing. If the individual does not file a petition requesting a hearing prior to such date, the Secretary or the guaranty agency, as appropriate, shall provide the individual a hearing under subsection (a)(5) upon request, but such hearing need not be provided prior to issuance of a garnishment order. A hearing under subsection (a)(5) may not be conducted by an individual under the supervision or control of the head of the guaranty agency, except that nothing in this sentence shall be construed to prohibit the appointment of an administrative law judge. The hearing official shall issue a final decision at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing.

"(c) NOTICE REQUIREMENTS.—The notice to the employer of the withholding order shall contain only such information as may be necessary for the employer to comply with the withholding order.

"(d) DEFINITION.—For the purpose of this section, the term 'disposable pay' means that part of the compensation of any individual remaining after the deduction of any amounts required by law to be withheld.".

(b) Section 428E of the Act is repealed.

(c) Section 428(c)(6) of the act is amended by striking out subparagraph (D).

DATA MATCHING

SEC. 306. Part G of title IV of the Act is further amended by inserting immediately following section 489 the following new section:

"DATA MATCHING

"SEC. 489A. (a)(1) The Secretary is authorized to obtain information from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States, or of any State, concerning the most recent address of an individual obligated on a loan held by the Secretary or a loan made in accordance with part B of this title held by a guaranty agency, or an individual owing a refund of an overpayment of a grant awarded under this title, and the name and address of such individual's employer, if the Secretary determines that such information is needed to enforce the loan or collect the overpayment.

"(2) The Secretary is authorized to provide the information described in paragraph (1) to a guaranty agency holding a loan made under part B of this title on which such individual is obligated.

"(b)(1) Notwithstanding any other provision of law, whenever the head of any depart-

ment, agency, or instrumentality of the United States or of a State receives a request from the Secretary for information authorized under this section, such individual or his designee shall promptly cause a search to be made of the records of the agency to determine whether the information requested is contained in those records.

"(2)(A) If such information is found, the individual shall, in conformance with the provisions of the Privacy Act of 1974, as amended, immediately transmit such information to the Secretary, except that if disclosure of the information would contravene national policy or security interests of the United States, or the confidentiality of census data, the individual shall immediately so notify the Secretary and shall not transmit the information.

"(B) If no such information is found, the individual shall immediately so notify the Secretary.

"(3)(A) The reasonable costs incurred by any such agency of the United States or of a State in providing any such information to the Secretary shall be reimbursed by the Secretary, and retained by the agency.

"(B) Whenever such information is furnished to a guaranty agency, that agency shall be charged a fee to be used to reimburse the Secretary for the expense of providing such information.

"(c) The Secretary of Labor shall enter into an agreement with the Secretary to provide prompt access for the Secretary, in accordance with this section, to the wage and unemployment compensation claims information and data maintained by or for the Department of Labor or State employment security agencies.".

## TITLE IV—ELECTROMAGNETIC SPECTRUM FUNCTION

**SECTION 401. SHORT TITLE.**

This Act may be cited as the "Emerging Telecommunications Technologies Act of 1991".

**SEC. 402. FINDINGS.**

The Congress finds that—

(1) spectrum is a valuable natural resource;

(2) it is in the national interest that this resource be used more efficiently;

(3) the spectrum below 6 gigahertz (GHz) is becoming increasingly congested, and, as a result entities that develop innovative new spectrum-based services are finding it difficult to bring these services to the marketplace;

(4) scarcity of assignable frequencies can and will—

(A) impede the development and commercialization of new spectrum-based products and services;

(B) reduce the capacity and efficiency of the United States telecommunications system; and

(C) adversely affect the productive capacity and international competitiveness of the United States economy;

(5) the United States Government presently lacks explicit authority to use excess radiocommunications capacity to satisfy non-United States Government requirements;

(6) more efficient use of the spectrum can provide the resources for increased economic returns;

(7) many commercial users derive significant economic benefits from their spectrum licenses, both through the income they earn from their use of the spectrum and the returns they realize upon transfer of their licenses to third parties; but under current procedures, the United States public does not sufficiently share in their benefits;

(8) many United States Government functions and responsibilities depend heavily on the use of the radio spectrum, involve unique applications, and are performed in the broad national and public interest;

(9) competitive bidding for spectrum can yield significant benefits for the United States economy by increasing the efficiency of spectrum allocations, assignment, and use; and for United States taxpayers by producing substantial revenues for the United States Treasury; and

(10) the Secretary, the President, and the Commission should be directed to take appropriate steps to foster the more efficient use of this valuable national resource, including the reallocation of a target amount of 200 megahertz (MHz) of spectrum from United States Government use under section 305 of the Communications Act (47 U.S.C. 305) to non-United States Government use pursuant to other provisions of the Communications Act and the implementation of competitive bidding procedures by the Commission for some new assignments of the spectrum.

**SEC. 403. NATIONAL SPECTRUM PLANNING.**

(a) PLANNING ACTIVITIES.—The Secretary and the Chairman of the Commission shall, at least twice each year, conduct joint spectrum planning meetings with respect to the following issues—

(1) future spectrum needs;

(2) the spectrum allocation actions necessary to accommodate those needs, including consideration of innovation and marketplace developments that may affect the relative efficiencies of different portions of the spectrum; and

(3) actions necessary to promote the efficient use of the spectrum, including proven spectrum management techniques to promote increased shared use of the spectrum as a means of increasing non-United States Government access; and innovation in spectrum utilization including means of providing incentives for spectrum users to develop innovative services and technologies.

(b) REPORTS.—The Secretary and the Chairman of the Commission shall submit a joint annual report to the President on the joint spectrum planning meetings conducted under subsection (a) and any recommendations for action developed in such meetings.

(c) OPEN PROCESS.—The Secretary and the Commission will conduct an open process under this section to ensure the full consideration and exchange of views among any interested entities, including all private, public, commercial, and governmental interests.

**SEC. 404. IDENTIFICATION OF REALLOCABLE FREQUENCIES.**

(a) IDENTIFICATION REQUIRED.—The Secretary shall prepare and submit to the President the reports required by subsection (d) to identify bands of frequencies that—

(1) are allocated on a primary basis for United States Government use and eligible for licensing pursuant to section 305(a) of the Communications Act (47 U.S.C. 305(a));

(2) are not required for the present or identifiable future needs of the United States Government;

(3) can feasibly be made available during the next 15 years after enactment of this Act for use under the provisions of the Communications Act for non-United States Government users;

(4) will not result in costs to the Federal Government that are excessive in relation to the benefits that may be obtained from the potential non-United States Government uses; and

(5) are likely to have significant value for non-United States Government uses under the Communications Act.

(b) AMOUNT OF SPECTRUM RECOMMENDED.—

(1) IN GENERAL.—The Secretary shall recommend as a goal for reallocation, for use by non-United States Government stations, bands of frequencies constituting a target amount of 200 MHz, that are located below 6 GHz, and that meet the criteria specified in paragraphs (1) through (5) of subsection (a). If the Secretary identifies (as meeting such criteria) bands of frequencies totalling more than 200 MHz, the Secretary shall identify and recommend for reallocation those bands (totalling not less than 200 MHz) that are likely to have the greatest potential for non-United States Government uses under the Communications Act.

(2) MIXED USES PERMITTED TO BE COUNTED.—Bands of frequencies which the Secretary recommends be partially retained for use by United States Government stations, but which are also recommended to be reallocated and made available under the Communications Act for use by non-United States Government stations, may be counted toward the target 200 MHz of spectrum required by paragraph (1) of this subsection, except that—

(A) the bands of frequencies counted under this paragraph may not count toward more than one-half of the amount targeted by paragraph (1) of this subsection;

(B) a band of frequencies may not be counted under this paragraph unless the assignments of the band to United States Government stations under section 305 of the Communications Act (47 U.S.C. 305) are limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by which United States Government stations is substantially less (as measured by geographic area, time, or otherwise) than the potential United States Government use to be made; and

(C) the operational sharing permitted under this paragraph shall be subject to procedures which the Commission and the Department of Commerce shall establish and implement to ensure against harmful interference.

(c) CRITERIA FOR IDENTIFICATION.—

(1) NEEDS OF THE UNITED STATES GOVERNMENT.—In determining whether a band of frequencies meets the criteria specified in subsection (a)(2), the Secretary shall—

(A) consider whether the band of frequencies is used to provide a communications service that is or could be available from a commercial provider;

(B) seek to promote—

(i) the maximum practicable reliance on commercially available substitutes;

(ii) the sharing of frequencies (as permitted under subsection (b)(2));

(iii) the development and use of new communications technologies; and

(iv) the use of nonradiating communications systems where practicable; and

(C) seek to avoid—

(i) serious degradation of United States Government services and operations;

(ii) excessive costs to the United States Government and civilian users of such Government services; and

(iii) identification of any bands for reallocation that are likely to be subject to substitution for the reasons specified in section 5(b)(2)(A) through (C).

(2) FEASIBILITY OF USE.—In determining whether a frequency band meets the criteria specified in subsection (a)(3), the Secretary shall—

(A) assume such frequencies will be assigned by the Commission under section 303 of the Communications Act (47 U.S.C. 303) over the course of fifteen years after the enactment of this Act;

(B) assume reasonable rates of scientific progress and growth of demand for telecommunications services;

(C) determine the extent to which the reallocation or reassignment will relieve actual or potential scarcity of frequencies available for non-United States Government use;

(D) seek to include frequencies which can be used to stimulate the development of new technologies; and

(E) consider the cost to reestablish United States Government services displaced by the reallocation of spectrum during the fifteen year period.

(3) COSTS TO THE UNITED STATES GOVERNMENT.—In determining whether a frequency band meets the criteria specified in subsection (a)(4), the Secretary shall consider—

(A) the costs to the United States Government of reaccommodating its services in order to make spectrum available for non-United States Government use, including the incremental costs directly attributable to the loss of the use of the frequency band; and

(B) the benefits that could be obtained from reallocating such spectrum to non-United States Government users, including the value of such spectrum in promoting—

(i) the delivery of improved service to the public;

(ii) the introduction of new services; and

(iii) the development of new communications technologies.

(4) NON-UNITED STATES GOVERNMENT USE.—In determining whether a band of frequencies meets the criteria specified in subsection (a)(5), the Secretary shall consider—

(A) the extent to which equipment is commercially available that is capable of utilizing the band; and

(B) the proximity of frequencies that are already assigned for non-United States Government use.

(d) PROCEDURE FOR IDENTIFICATION OF REALLOCABLE BANDS OF FREQUENCIES.—

(1) SUBMISSION OF REPORTS TO THE PRESIDENT TO IDENTIFY AN INITIAL 30 MHZ TO BE MADE AVAILABLE IMMEDIATELY FOR REALLOCATION, AND TO PROVIDE PRELIMINARY AND FINAL REPORTS ON ADDITIONAL FREQUENCIES TO BE REALLOCATED.—

(A) Within six months after the date of the enactment of this Act, the Secretary shall prepare and submit to the President a report which specifically identifies an initial 30 MHz of spectrum, to be made available for reallocation upon issuance of this report, and to be distributed by the Commission pursuant to competitive bidding procedures;

(B) within twelve months after the date of the enactment of this Act, the Secretary shall prepare and submit to the President a preliminary report to identify reallocable bands of frequencies meeting the criteria established by this section;

(C) Within twenty-four months after the date of enactment of this Act, the Secretary shall prepare and submit to the President a final report which identifies the target 200 MHz for reallocation (which shall encompass the initial 30 MHz previously designated under subsection (d)(1)(A)); and

(D) The President shall publish the reports required by this Section in the Federal Register.

(2) CONVENING OF PRIVATE SECTOR ADVISORY COMMITTEE.—Not later than twelve months after the enactment of this Act, the Secretary shall convene a private sector advisory committee to—

(A) review the bands of frequencies identified in the preliminary report required by subsection (d)(1)(B);

(B) advise the Secretary with respect to—

(i) the bands of frequencies which should be included in the final report required by subsection (d)(1)(C); and

(ii) the effective dates which should be established under subsection (e) with respect to such frequencies;

(C) receives public comment on the Secretary's preliminary and final reports under subsection (d); and

(D) prepare and submit the report required by paragraph (d)(4) of section 4.

The private sector advisory committee shall meet at least quarterly until each of the actions required by section 5(a) have taken place.

(3) COMPOSITION OF COMMITTEE; CHAIRMAN.—The private sector advisor committee shall include—

(A) the Chairman of the Commission, and the Secretary, or their designated representatives, and two other representatives from two different United States Government agencies that are spectrum users, other than the Department of Commerce, as such agencies may be designated by the Secretary; and

(B) Persons who are representative of—

(i) manufacturers of spectrum-dependent telecommunications equipment;

(ii) commercial users;

(iii) other users of the electromagnetic spectrum; and

(iv) other interested members of the public who are knowledgeable about the uses of the electromagnetic spectrum to be chosen by the Secretary.

A majority of the members of the committee shall be members described in subparagraph (B), and one of such members shall be designated as chairman by the Secretary.

(4) RECOMMENDATIONS ON SPECTRUM ALLOCATION PROCEDURES.—The private sector advisory committee shall, not later than twenty-four months after its formation, submit to the Secretary, the Commission, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science and Transportation of the Senate, such recommendations as the committee considers appropriate for the reform of the process of allocating the electromagnetic spectrum between United States Government users and non-United States Government users, and any dissenting views thereon.

(e) TIMETABLE FOR REALLOCATION AND LIMITATION.—The Secretary shall, as part of the final report required by subsection (d)(1)(C), include a timetable for the effective dates by which the President shall, within fifteen years after enactment of this Act, withdraw or limit assignments on frequencies specified in the report. The recommended effective dates shall—

(1) permit the earliest possible reallocation of the frequency bands, taking into account the requirements of section 6(a);

(2) be based on the useful remaining life of equipment that has been purchased or contracted for to operate on identified frequencies;

(3) be based on the need to coordinate frequency use with other nations; and

(4) avoid the imposition of incremental costs on the United States Government directly attributable to the loss of the use of frequencies or the changing to different frequencies that are excessive in relation to the benefits that may be obtained from non-United States Government uses of the reassigned frequencies.

**SEC. 405. WITHDRAWAL OF ASSIGNMENT TO UNITED STATES GOVERNMENT STATIONS.**

(a) IN GENERAL.—The President shall—

(1) within three months after receipt of the Secretary's report under section 4(d)(1)(A), withdraw or limit the assignment to a United States Government station of any frequency on the initial 30 MHz which that report recommends for immediate reallocation;

(2) with respect to other frequencies recommended for reallocation by the Secretary's report in section 4(d)(1)(C), by the effective dates recommended pursuant to section 4(e) (except as provided in section (b)(4)), withdraw or limit the assignment to a United States Government station of any frequency which that report recommends be reallocated or available for mixed use on such effective dates;

(3) assign or reassign other frequencies to United States Government stations as necessary to adjust to such withdrawal or limitation of assignments; and

(4) publish in the Federal Register a notice and description of the actions taken under this subsection.

(b) EXCEPTIONS.—

(1) AUTHORITY TO SUBSTITUTE.—If the President determines that a circumstance described in section 5(b)(2) exists, the President—

(A) may, within one month after receipt of the Secretary's report under section 4(d)(1)(A), and within six months after receipt of the Secretary's report under section 4(d)(1)(C), substitute an alternative frequency or band of frequencies for the frequency or band that is subject to such determination and withdraw (or limit) the assignment of that alternative frequency or band in the manner required by subsection (a); and

(B) shall publish in the Federal Register a statement of the reasons for taking the action described in subparagraph (A).

(2) GROUNDS FOR SUBSTITUTION.—For purposes of paragraph (1), the following circumstances are described in this paragraph:

(A) the reassignment would seriously jeopardize the national security interests of the United States;

(B) the frequency proposed for reassignment is uniquely suited to meeting important United States Governmental needs;

(C) the reassignment would seriously jeopardize public health or safety; or

(D) the reassignment will result in incremental costs to the United States Government that are excessive in relation to the benefits that may be obtained from non-United States Government uses of the reassigned frequency.

(3) CRITERIA FOR SUBSTITUTED FREQUENCIES.—For purposes of paragraph (1), a frequency may not be substituted for a frequency identified by the final report of the Secretary under Section 4(d)(1)(C) unless the substituted frequency also meets each of the criteria specified by section 4(a).

(4) DELAYS IN IMPLEMENTATION.—If the President determines that any action cannot be completed by the effective dates recommended by the Secretary pursuant to section 4(e), or that such an action by such date would result in a frequency being unused as a consequence of the Commission's plan under section 6, the President may—

(A) withdraw or limit the assignment to United States Government stations on a later date that is consistent with such plan,

by providing notice to that effect in the Federal Register, including the reason that withdrawal at a later date is required; or

(B) substitute alternative frequencies pursuant to the provisions of this subsection.

(c) COSTS OF WITHDRAWING FREQUENCIES ASSIGNED TO THE UNITED STATES GOVERNMENT; APPROPRIATIONS AUTHORIZED.—Any United States Government licensee, or non-United States Government entity operating on behalf of a United States Government licensee, that is displaced from a frequency pursuant to this section may be reimbursed not more than the incremental costs it incurs, in such amounts as provided in advance in appropriation acts, that are directly attributable to the loss of the use of the frequency pursuant to this section. The estimates of these costs shall be prepared by the affected agency, in consultation with the Department of Commerce.

(d) There are authorized to be appropriated to the affected licensee agencies such sums as may be necessary to carry out the purposes of this section.

**SEC. 406. DISTRIBUTION OF FREQUENCIES BY THE COMMISSION.**

(a) PLANS SUBMITTED.—

(1) With respect to the initial 30 MHz to be reallocated from United States Government to non-United States Government use under section 4(d)(1)(A), not later than twenty-four months after enactment of this Act, the Commission shall complete a public notice and comment proceeding regarding the allocation of this spectrum and shall form a plan to assign such spectrum pursuant to competitive bidding procedures, pursuant to section 8 of this Act, during fiscal years 1994 through 1996.

(2) With respect to the remaining spectrum to be reallocated from United States Government to non-United States Government use under section 4(e), not later than two years after issuance of the report required by section 4(d)(1)(C), the Commission shall complete a public notice and comment proceeding; and the Commission shall, after consultation with the Secretary, prepare and submit to the President a plan for the distribution under the Communications Act of the frequency bands reallocated pursuant to the requirements of this Act. Such plan shall—

(A) not propose the immediate distribution of all such frequencies, but, taking into account the timetable recommended by the Secretary pursuant to section 4(e), shall propose—

(i) gradually to distribute the frequencies remaining, after making the reservation required by subparagraph (ii), over the course of a ten-year period beginning on the date of submission of such plan; and

(ii) to reserve a significant portion of such frequencies for distribution beginning after the end of such ten-year period;

(B) contain appropriate provisions to ensure—

(i) the availability of frequencies for new technologies and services in accordance with the policies of section 7 of the Communications Act (47 U.S.C. 157); and

(ii) the availability of frequencies to stimulate the development of such technologies; and

(C) not prevent the Commission from allocating bands of frequencies for specific uses in future rulemaking proceedings.

(b) AMENDMENT TO THE COMMUNICATIONS ACT.—Section 303 of the Communications Act is amended by adding at the end thereof the following new subsection (u) (indicating that the Commission shall):

"(u) Have authority to assign the frequencies reallocated from United States Government use to non-United States Government use pursuant to the 'Emerging Telecommunications Technologies Act of 1991': *Provided*, That any such assignment shall expressly be made subject to the right of the President to reclaim such frequencies under the provisions of section 7 of the 'Emerging Telecommunications Technologies Act of 1991'.".

**SEC. 407. AUTHORITY TO RECLAIM REASSIGNED FREQUENCIES.**

(a) AUTHORITY OF PRESIDENT.—The President may reclaim reallocated frequencies for reassignment to United States Government stations in accordance with this section.

(b) PROCEDURE FOR RECLAIMING FREQUENCIES.—

(1) UNASSIGNED FREQUENCIES.—If the frequencies to be reclaimed have not been assigned by the Commission, the President may reclaim them based on the grounds described in section 5(b)(2) of this Act.

(2) ASSIGNED FREQUENCIES.—If the frequencies to be reclaimed have been assigned by the Commission, the President may reclaim them based on the grounds described in section 5(b)(2) of this Act, except that the notification required by section 5(b)(1) shall include—

(A) a timetable to accommodate an orderly transition for licensees to obtain new frequencies and equipment necessary for their utilization; and

(B) an estimate of the cost of displacing the licensees.

(c) COSTS OF RECLAIMING FREQUENCIES.—Any non-United States Government licensee that is displaced from a frequency pursuant to this section shall be reimbursed the incremental costs it incurs that are directly attributable to the loss of the use of the frequency pursuant to this section.

(d) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706 of the Communications Act (47 U.S.C. 606).

**SEC. 408. COMPETITIVE BIDDING.**

(a) COMPETITIVE BIDDING AUTHORIZED.—Section 309 of the Communications Act is amended to add a new subsection (j) providing that:

"(j)(1) The Commission shall use competitive bidding for awarding all initial licenses or new construction permits, including licenses and permits for spectrum reallocated for non-United States Government use pursuant to the 'Emerging Telecommunications Technologies Act of 1991', subject to the exclusions listed in subsection (j)(2).

"(A) The Commission shall require potential bidders to file a first-stage application indicating an intent to participate in the competitive bidding process and containing such other information as the Commission finds necessary. After conducting the bidding, the Commission shall require the winning bidder to submit a second-stage application. Upon determining that such application is acceptable for filing and that the applicant is qualified pursuant to subsection (j)(1)(B), the Commission shall grant a permit or license.

"(B) No construction permit or license shall be granted to an applicant selected pursuant to subsection (j)(1)(A) unless the Commission determines that such applicant is qualified pursuant to section 308(b) and section 309(a) of the Communications Act, on the basis of the information contained in the first- and second-stage applications submitted under subsection (j)(1)(A).

"(C) Each participant in the competitive bidding process is subject to the schedule of changes contained in section 8 of the Communications Act (47 U.S.C. 158).

"(D) The Commission shall have the authority in awarding construction permits or licenses under competitive bidding procedures to (i) define the geographic and frequency limitations and technical requirements, if any, of such permits or licenses; (ii) establish minimum acceptable competitive bids; and (iii) establish other appropriate conditions on such permits and licenses that will serve the public interest.

"(E) The Commission shall, within eighteen months after enactment of the 'Emerging Telecommunications Technologies Act of 1991', following public notice and comment proceedings, adopt rules establishing competitive bidding procedures under this subsection, including the method of bidding and the basis for payment (such as flat fees, fixed or variable royalties, combinations of flat fees and royalties, or other reasonable forms of payment); and a plan for applying such competitive bidding procedures to the initial 30 MHz reallocated from United States Government to non-United States Government use under section 4(d)(1)(A) of the 'Emerging Telecommunications Technologies Act of 1991', to be distributed during the fiscal years 1994 through 1996.

"(2) Competitive bidding shall not apply to:

"(A) license renewals;

"(B) the United States Government and State or local government entities;

"(C) amateur operator services, public radio broadcast services, public television broadcast services, public safety services, and radio astronomy services;

"(D) private radio end-user licenses, such as Specialized Mobile Radio Service (SMRS), maritime, and aeronautical end-user licenses;

"(E) any license grant to a non-United States Government licensee being moved from its current frequency assignment to a different one by the Commission in order to implement the goals and objectives underlying the 'Emerging Telecommunications Technologies Act of 1991';

"(F) any other service, class of services, or assignments that the Commission determines, after conducting public comment and notice proceedings, should be exempt from competitive bidding because of public interest factors warranting an exemption.

"(3) Moneys received from competitive bidding pursuant to this subsection shall be deposited in the general fund of the United States Treasury, pursuant to the provisions enacted in appropriations acts.".

(b) RANDOM SELECTION NOT TO APPLY WHEN COMPETITIVE BIDDING REQUIRED.—Section 309(i)(1) of the Communications Act (47 U.S.C. 309) is amended by deleting the period after the word "selection" and inserting in lieu thereof: ", except in instances where competitive bidding procedures are required under section 309(j) of the Communications Act.".

(c) SPECTRUM ALLOCATION DECISIONS.—Section 303 of the Communications Act is amended to add a new subsection (v):

"(v) In making spectrum allocation decisions among services that are subject to competitive bidding, the Commission is authorized to consider as one factor among others taken into account in making its determination, the relative economic values and other public interest benefits of the proposed uses as reflected in the potential revenues that would be collected under its competitive bidding procedures.".

**SEC. 409. DEFINITIONS.**

As used in the Emerging Telecommunications Technologies Act of 1991:

(1) The term "Act" means the Emerging Telecommunications Technologies Act of 1991.

(2) The term "allocation" means an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunications services.

(3) The term "assignment" means an authorization given by the Commission or the United States Government for a radio station to use a radio frequency or radio frequency channel.

(4) The term "Commission" means the Federal Communications Commission.

(5) The term "Communications Act" means the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.).

(6) The term "Secretary" means the Secretary of Commerce.

## NATIONAL DEFENSE AUTHORIZATION ACT, FISCAL YEARS 1992 AND 1993

## SPECTER AMENDMENTS NOS. 1019 AND 1020

(Ordered to lie on the table.)

Mr. SPECTER submitted two amendments intended to be proposed by him to the bill S. 1507, supra, as follows:

AMENDMENT NO. 1019

On page 297, between lines 18 and 19, insert the following:

**SEC. 1125. PARENTAL ACCESS TO MILITARY RECORDS OF DECEASED MEMBER OF THE ARMED FORCES.**

(a) ARMY.—(1) Chapter 445 of title 10, United States Code, is amended by adding at the end the following new section:

**"§ 4714. Parental access to military records of deceased member**

"(A) The Secretary of the Army shall make available to a parent of a member of the Army who died while serving on active duty or on inactive-duty training a copy of any military service record of the member, including any autopsy report or report of investigation concerning the cause of the member's death, that is requested in writing by the parent.

"(b) Subsection (a) applies only to records within the Department of the Army.

"(c) The Secretary may impose a nominal charge for the administrative and reproduction expenses of responding to a request of a parent under subsection (a).

"(d) In this section, the term 'parent' includes an adoptive parent and a stepparent.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"4714. Parental access to military records of deceased member.".

(c) NAVY AND MARINE CORPS.—(1) Chapter 577 of title 10, United States Code, is amended by adding at the end the following new section:

**"§ 6523. Parental access to military records of deceased member**

"(a) The Secretary of the Navy shall make available to a parent of a member of the Navy or Marine Corps who died while serving on active duty or on inactive-duty training a copy of any military service record of the member, including any autopsy report or report of investigation concerning the cause of the member's death, that is requested in writing by the parent.

"(b) Subsection (a) applies only to records within the Department of the Navy.

"(c) The Secretary may impose a nominal charge for the administrative and reproduction expenses of responding to a request of a parent under subsection (a).

"(d) In this section, the term 'parent' includes an adoptive parent and a stepparent.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"6523. Parental access to military records of deceased member.".

(c) AIR FORCE.—(1) Chapter 945 of title 10, United States Code, is amended by adding at the end the following new section:

**"§ 9714. Parental access to military records of deceased member**

"(a) The Secretary of the Air Force shall make available to a parent of a member of the Air Force who died while serving on active duty or on inactive-duty training a copy of any military service record of the member, including any autopsy report or report of investigation concerning the cause of the member's death, that is requested in writing by the parent.

"(b) Subsection (a) applies only to records within the Department of the Air Force.

"(c) The Secretary may impose a nominal charge for the administrative and reproduction expenses of responding to a request of a parent under subsection (a).

"(d) In this section, the term 'parent' includes an adoptive parent and a stepparent.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"9714. Parental access to military records of deceased member.".

AMENDMENT NO. 1020

On page 378, between lines 3 and 4, insert the following:

**SEC. 2804. JOB TRAINING FOR EMPLOYEES DISPLACED BY BASE CLOSURE AND REALIGNMENTS.**

(a) PROGRAM REQUIRED.—The Department of Defense shall provide the necessary funds to the Secretary of Labor to conduct a program to provide job training and other reemployment assistance for civilian employees of the Department of Defense whose positions at a military installation are terminated by reason of the closure or realignment of that installation.

(b) DEFINITIONS.—In this section, the terms "military installation" and "realignment" have the meanings given such terms in section 2687(e) of title 10, United States Code.

## MCCAIN (AND OTHERS) AMENDMENT NO. 1021

Mr. MCCAIN (for himself, Mr. BRYAN, Mr. DOLE, Mr. NUNN, Mr. BIDEN, Mr. BRADLEY, Mr. CONRAD, Mr. Dodd, Mr. JEFFORDS, Mr. GARN, Mrs. KASSEBAUM, Mr. COHEN, Mr. LIEBERMAN, Mr. MCCONNELL, Mr. REID, Mr. DIXON, Mr. SHELBY, Mr. RIEGLE, Mr. MACK, Mr. SANFORD, and Mr. SMITH) proposed an amendment to the bill S. 1507, supra, as follows:

On page 297, between lines 18 and 19, insert the following:

**SEC. 1125. DISCLOSURE OF INFORMATION CONCERNING UNITED STATES PERSONNEL CLASSIFIED AS PRISONER OF WAR OR MISSING IN ACTION.**

(a) IN GENERAL.—(1) Except as provided in subsection (c), the head of each department or agency of the Federal Government holding or receiving any information referred to in paragraph (2) relating to any United States personnel currently classified as prisoners of war or missing in action shall make such information available to the public.

(2) Paragraph (1) applies to any record, live-sighting report, or other information relating to the location, treatment, or condition of any person referred to in such paragraph on or after the date on which such person passed from control of the Armed Forces of the United States into a status ultimately classified as prisoner of war or missing in action, as the case may be.

(b) DEPARTMENT OF DEFENSE INFORMATION.—At the same time that the Secretary of Defense makes available to the public the records and other information that is subject to the deadline established by subsection (d)(1), the Secretary shall also make available to the public a complete list of United States personnel classified as prisoners of war, missing in action, or killed in action (body not returned) after 1940, including during a period of war. The list shall include—

(1) the current classification of each listed person for Department of Defense purposes; and

(2) each change that has occurred in the listed person's classification (for Department of Defense purposes) since the original classification.

(c) EXCEPTIONS TO DISCLOSURE REQUIREMENT.—(1) A record or other information, including any fatality report, may not be made available to the public pursuant to subsection (a) if—

(A) such record or other information is exempt from the disclosure requirements of section 552 of title 5, United States Code, by reason of subsection (b) of such section;

(B) the record or other information is in a system of records exempt from the requirements of subsection (d) of section 552a of such title pursuant to subsection (j) or (k) of such section; or

(C) the record or other information specifically mentions a person by name unless such person or, in the case of a dead or incapacitated person or a person whose whereabouts is unknown, the closest living relative of such person (as determined by the official custodian of such record or information) expressly consents in writing to the disclosure of such record or other information.

(2) The prohibition contained in paragraph (1)(C) does not apply to the access of a member of the family of a person to any record or information to the extent that the record or other information relates to such person.

(3) The authority of a person to consent to disclosure of a record or other information for the purposes of paragraph (1)(C) may be delegated to another person or an organization only by means of an express legal power of attorney granted by the person authorized by such paragraph to consent to the disclosure.

(d) DEADLINES.—In the case of records or other information that are required by subsection (a) to be made available to the public and are held by a department or agency of the Federal Government on the date of the enactment of this Act, the head of such department or agency shall make such records and other information available to the public pursuant to this section not later than 1 year after such date.

(2) Whenever after the date of the enactment of this Act a department or agency of the Federal Government receives any record or other information referred to in subsection (a) that is required by this section to be made available to the public, the head of such department or agency shall make such record or other information available to the public pursuant to this section not later than 1 year after it is received by that department or agency.

(3) If the head of a department or agency determines that his disclosures of any record or other information referred to in subsection (a) by the date required by paragraph (1) or (2) will compromise the safety of United States personnel known or thought to be held as prisoners of war, then the head of such department or agency may withhold such record or other information from the disclosure otherwise required by this section and shall immediately notify the President and the congressional intelligence committees of that determination.

(e) DEFINITIONS.—In this section:

(1) The term "period of war" has the meaning given such term in section 101(11) of title 38, United States Code.

(2) The term "congressional intelligence committees" means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

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## GLENN (AND LEVIN) AMENDMENT NO. 1022

Mr. NUNN. (for Mr. GLENN, for himself and Mr. LEVIN) proposed an amendment to the bill S. 1507, supra; as follows:

On page 249, between lines 3 and 4, insert the following new sections:

**SEC. 835. IMPROVEMENT OF INVENTORY MANAGEMENT POLICY AND PROCEDURE.**

(a) IMPROVEMENT IN INVENTORY MANAGEMENT POLICY.—Section 2458(a) of title 10, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(3) set forth a uniform system for the valuation of inventory items by the military departments and Defense Agencies."

(b) ANNUAL REPORT ON INVENTORY.—Section 2721 of title 10, United States Code, is amended—

(1) by inserting "(a)" before "Under"; and

(2) by adding at the end the following new subsection:

"(b) The regulations prescribed pursuant to subsection (a) shall include a requirement that the records maintained under such subsection—

"(1) to the extent practicable, provide up-to-date information on all items in the iventory of the Department of Defense;

"(2) indicate whether the inventory of each item is sufficient or excessive in relation to the needs of the Department for that item; and

"(3) permit the Secretary of defense to include in the budget submitted to Congress under section 1105 of title 31 for each fiscal year, information relating to—

"(A) the amounts proposed for each appropriation account in such budget for inventory purchases of the Department of Defense; and

"(B) the amounts obligated for such inventory purchases out of the corresponding appropriations account for the preceding fiscal year.".

"(c) IMPLEMENTATION.—The Secretary of Defense shall establish the uniform system of valuation described in section 2458(a)(3) of title 10, United States Code (as added) by subsection (a)), and prescribe the regulations required by section 2721(b) of such title (as added by subsection (b)), not later than 180 days after the date of the enactment of this Act.

In section 2(b), amend the table of contents by inserting after the item relating to section 834 the following new item:

Sec. 835. Improvement of inventory management policy and procedure.

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## LEVIN AMENDMENT NO. 1023

Mr. NUNN (for Mr. LEVIN proposed an amendment to the bill S. 1507, supra, as follows:

At the appropriate place in the bill, insert the following new section:

**SEC. . ACQUISITION OF INVENTORY.**

(a) The Secretary of Defense may not incur any obligations against the stock funds of the Department of Defense for the acquisition of any items of supply if such acquisition is likely to result in an on-hand inventory (excluding war reserves) of such items of supply in excess of two years of operating stocks.

(b) Notwithstanding subsection (a), the head of a procuring activity may authorize the acquisition of an item of supply if such head of a procuring activity determines in writing that such acquisition is necessary for industrial base purposes or for other national security reasons.

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## COHEN (AND WARNER) AMENDMENT NO. 1024

Mr. WARNER (for Mr. COHEN, for himself and Mr. WARNER) proposed an amendment to the bill S. 1507, supra, as follows:

At the appropriate place in the bill, insert the following new sections:

**SECTION 1. PROMPT PAYMENT FOR PURCHASE OF FISH.**

Section 3903(2) of title 31, United States Code is amended by striking "provide" and inserting "or of fresh or frozen fish (as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), provide".

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## MITCHELL (AND COHEN) AMENDMENT NO. 1025

Mr. NUNN (for Mr. MITCHELL, for himself and Mr. COHEN) proposed an amendment to the bill S. 1507, supra, as follows:

On page 368, strike out lines 14–16 and insert the following in lieu thereof:

"(B)(1) Not more than one-fifth of the professional analysts of the Commission staff may be persons detailed from the Department of Defense to the Commission.

"(2) No person detailed from the Department of Defense to the Commission may be assigned as the lead professional analyst with respect to a military department or defense agency.".

On page 371, between lines 6 and 7, insert the following:

"(6) The Secretary of Defense shall prescribe regulations to ensure that any information provided to the Commission by a person described in paragraph (5)(B) shall, within 24 hours of the submission of such information to the Commission, be submitted to the Senate and the House of Representives, and shall be made available to the Members of each such House in accordance with the rules of each such House.".

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## NUNN (AND OTHERS) AMENDMENT NO. 1026

Mr. NUNN (for himself Mr. DIXON, and Mr. WARNER proposed an amendment to the bill S. 1507, supra, as follows:

On page 369, strike out line 8 and all that follows through "(D)" on line 16, and insert in lieu thereof the following:

"(A) there may not be more than 15 persons on the staff at any one time;

"(B) the staff may perform only such functions as are necessary to prepare for the transition to new membership on the Commission in the following year; and

"(C)

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## LOTT AMENDMENT NO. 1027

Mr. WARNER (for Mr. LOTT) proposed an amendment as the bill S. 1507, supra, as follows:

At the end of Title XI, General Provisions, insert the following:

**"SEC. 11xx. REPORT ON SHIPBUILDING EXPORT LICENSE.**

"Not later than four months after enactment of this bill, the Secretary of the Navy shall report to the Committees on Armed Services of the Senate and the House of Representatives on the criteria to be used in evaluating requests by corporations in the United States for a license to import components of submarines designed and manufactured abroad for further assembly and re-export."

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## THURMOND (AND OTHERS) AMENDMENT NO. 1028

Mr. WARNER (for Mr. THURMOND, for himself, Mr. WARNER, Mr. NUNN, Mr. HOLLINGS, Mr. ROBB, Mr. BENTSEN, Mr. LIEBERMAN, Mr. REID, Mr. BRYAN, Mr. FOWLER, Mr. DOLE, Mr. COATS, Mr. SIMPSON, Mr. DANFORTH, Mr. GRAMM, Mr. JEFFORDS, Mr. LEAHY, AND Mr. SHELBY) proposed an amendment to the bill S. 1507, supra, as follows:

At the appropriate place in the bill, insert the following new section:

**SEC. . COMMENDATION OF THE MILITARY COLLEGES FOR THEIR CONTRIBUTIONS TO TRAINING THE CITIZEN-SOLDIERS.**

(a) FINDINGS.—Congress makes the following findings:

(1) The number of essential military colleges—institutions that the Department of Defense has recognized as constituting a special aspect of American higher education—has decreased from 11 institutions in 1914 to only 4 today: Norwich University, founded in 1819; Virginia Military Institute, established in 1839; The Citadel, The Military College of South Carolina, chartered in 1842; and North Georgia College, which opened in 1873;

(2) The hallmark of these institutions has been their dedication to the principle of the

citizen-soldier, and in this regard are joined in spirit and devotion by the Cadet Corps at Texas A & M University, and Virginia Polytechnic Institute and State University;

(3) Citizen-soldiers are educated, trained, and inspired to become productive members of society in any calling, but are also prepared to serve their country in a military role during times of war or national peril; and

(4) These citizen-soldiers have accepted as their duty an obligation to serve their country in every instance of war since the Mexican War, and have without fail or hesitation answered the call to arms—most recently with service in Southwest Asia as part of Operation Desert Storm: Now, therefore, be it

(b) RECOGNITION AND COMMENDATION.—In light of the findings in subsection (a), the Congress recognizes and commends military colleges for the unique contributions they have made and continue to make, and urges citizens of the United States to support the concept of the citizen-soldier to which these colleges are dedicated.

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## LEVIN (AND OTHERS) AMENDMENT NO. 1029

Mr. NUNN (for Mr. LEVIN, for himself, Mr. GLENN, Mr. BINGAMAN, Mr. COATS, Mr. COHEN and Mr. WARNER) proposed an amendment to the bill S. 1507, supra, as follows:

On page 239, line 5, strike out all through line 6 on page 240 and insert in lieu thereof the following:

**SEC. 826. EQUAL APPLICATION OF POST-EMPLOYMENT RESTRICTIONS.**

(a) PROCUREMENT ETHICS SIMPLIFICATION.—Section 27 of the Office of Procurement Policy Act (41 U.S.C. 423) is amended—

(1) in subsection (c)—

(A) in paragraph (1) by inserting "only" after "subsection (b)(1)";

(B) in paragraph (1)(A) by inserting "(including the modification or extension of a contract)" after "any procurement";

(C) by striking out paragraphs (2) and (3) and inserting in lieu thereof;

"(2) Whenever the head of a procuring activity approves a recusal under paragraph (1), a copy of the recusal request and the approval of the request shall be retained by such official for a period of time (not less than five years) specified in regulations prescribed in accordance with subsection (o).

"(3)(A) Except as provided in subparagraph (B), all recusal requests and approvals of recusal requests pursuant to this subsection shall be made available to the public on request.

"(B) Any part of a recusal request or an approval of a recusal request that is exempt from the disclosure requirements of section 552(B)(1)(A) of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public under subparagraph (A)."; and

(D) in paragraph (4)—by striking out "competing contractor" and inserting in lieu thereof "person";

(2) in subsection (e)(7) by adding at the end thereof the following new subparagraph:

"(C) A contractor in a contract of less than $500,000 is exempt from the requirement of paragraph (1)(B) with respect to such contract.";

(3) in subsection (f)—

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) No individual who, in the year prior to separation from service as an officer or employee of the Government or an officer of the uniformed services in a covered position, participated personally and substantially in acquisition functions related to a contract, subcontract, or claim of $500,000 or more and—

"(A) engaged in repeated direct contact with the contractor or subcontractor on matters relating to such contract, subcontract, or claim; or

"(B) exercised significant ongoing decisionmaking responsibility with respect to the contractor or subcontractor on matters relating to such contract, subcontract, or claim,

shall knowingly accept or continue employment with such contractor or subcontractor for a period of 1 year following the individual's separation from service, except that such individual may accept or continue employment with any division or affiliate of such contractor or subcontractor that does not produce the same or similar products as the entity involved in the negotiation or performance of the contract or subcontract or the adjustment of the claim.

"(2) No contractor or subcontractor, or any officer, employee, agent, or consultant of such contractor or subcontractor shall knowingly offer, provide, or continue any employment to another person, if such contractor, subcontractor, officer, employee, agent, or consultant knows or should know that the acceptance of such employment is or would be in violation of paragraph (1).

"(3) The head of each Federal agency shall designate in writing as a 'covered position' under this section each of the following positions in that agency:

"(A) Each source selection authority, each member of a source selection evaluation board, the chief of each financial or technical evaluation team, and any other position in which the incumbent is likely personally to exercise substantial responsibility for ongoing discretionary functions in the evaluation of proposals or the selection of a source for a contract in excess of $500,000.

"(B) Each procuring contracting officer and any other position in which the incumbent is likely personally to exercise substantial responsibility for ongoing discretionary functions in the negotiation of a contract in excess of $500,000 or the negotiation or settlement of a claim in excess of $500,000.

"(C) Each program executive officer, program manager, deputy program manager, and any other position in which the incumbent is likely personally to exercise similar substantial responsibility for ongoing discretionary functions in the management or administration of a contract in excess of $500,000.

"(D) Each administrative contracting officer, each official assigned on a permanent basis to a Government Plant Representative's Office, and any other position (including auditor and quality assurance positions) in which the incumbent is likely personally to exercise substantial responsibility for ongoing discretionary functions in the on-site oversight of a contractor's operations with respect to a contract in excess of $500,000.

"(E) Each position in which the incumbent is likely personally to exercise substantial responsibility for ongoing discretionary functions in operational or developmental testing activities involving repeated direct contact with a contractor regarding a contract in excess of $500,000.";

(4) in subsection (l)—

(A) by inserting "who are likely to be involved in contracts, modifications, or extensions in excess of the small purchase threshold" after "its procurement officials"; and

(B) by striking out "(e)" each place it appears and inserting in each such place "(f)";

(5) by amending subsection (n) to read as follows:

"(n) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

"(1) authorize the withholding of any information from the Congress, any committee or subcommittee thereof, a Federal agency, and board of contract appeals of a Federal agency, the Comptroller General, or an inspector general of a Federal agency;

"(2) restrict the disclosure of information to or its receipt by any person or class or persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

"(3) restrict a contractor from disclosing its own proprietary information or the recipient of information so disclosed by a contractor from receiving such information; or

"(4) restrict the disclosure or receipt of information relating to a Federal agency procurement that has been canceled by the agency, and that the contracting officer determines in writing is not likely to be resumed.";

(6) in subsection (o)(2)(A)—

(A) by inserting "money, gratuity, or other" before "thing of value"; and

(B) by inserting before the semicolon "and such other exceptions as may be adopted on a Governmentwide basis under section 7353 of title 5, United States Code"; and

(7) in subsection (p)—

(A) in paragraph (1) by striking out "clauses (i)—(viii)" and inserting in lieu thereof "clauses (i) through (vii)";

(B) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking out clause (i);

(ii) by redesignating clauses (ii) through (viii) as clauses (i) through (vii), respectively; and

(III) in clause (i) (as redesignated by subclause (II) of this clause) by striking out "review and approval of a specification" and inserting in lieu thereof "approval or issuance of a specification, acquisition plan, procurement request, or requisition"; and (ii) in subparagraph (B) by inserting "any individual, including an officer or employee of" after "includes";

(C) in paragraph (6)(A) by inserting "nonpublic" before "information"; and

(D) in paragraph (8)—

(i) by striking out "as the term 'designated agency official' in section 209(10)" and inserting in lieu thereof "provided under section 109(3)"; and

(ii) by striking out "(92 Stat. 1850; 5 U.S.C. App.)" and inserting in lieu thereof "(5 U.S.C. App. 6)".

(b) CRIMINAL LIABILITY.—Section 208(a) of title 18, United States Code, is amended—

(1) by inserting "(1)" before "Except as permitted"; and

(2) by adding at the end thereof the following new paragraph:

"(2) Whoever knowingly aids, abets, counsels, commands, induces or procures conduct prohibited by this section shall be subject to the penalties set forth in section 216 of this title.".

(c) REPEALS.—The following provisions of law are repealed:

(1) Sections 2397, 2397a, 2397b, and 2397c of title 10, United States Code.

(2) Section 281 of title 18, United States Code.

(3) Section 801 of title 37, United States Code.

(4) Part A of title VI of the Department of Energy Organization Act (42 U.S.C. 7211 through 7218).

(d) TECHNICAL AND CONFORMING AMENDMENTS.—(1) The table of sections for chapter 141 of title 10, United States Code, is amended by striking out the items relating to sections 2397, 2397a, 2397b, and 2397c.

(2) The table of sections for chapter 15 of title 18, United States Code, is amended by striking out the item relating to section 281.

(3) The table of sections for chapter 15 of title 37, United States Code, is amended by striking out the item relating to section 801.

(4) The table of contents of the Department of Energy Organiztion Act is amended by striking out the matter relating to part A of title VI.

(e) IMPLEMENTATION.—(1) No later than 180 days after the date of enactment of this Act, regulations implementing the amendments made by this Act to section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), including definitions of the terms used in subsection (f) of such section shall be issued in accordance with sections 6 and 25 of such Act (41 U.S.C. 405 and 521), after coordination with the Director of the Office of Government Ethics.

(2)(A) No officer, employee, agent, representative, or consultant of a contractor who has signed a certification under section 27(e)(1)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(e)(1)(B)) before the effective date of this Act shall be required to sign a new certification as a result of the enactment of this Act.

(B) No procurement official of a Federal agency who has signed a certification under section 27(l) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(l)) before the date of enactment of this Act shall be required to sign a new certification as a result of the enactment of this Act.

(3) Not later than May 31 of each of the years 1992 through 1996, the Inspector General of each Federal agency (or, in the case of a Federal agency that does not have an Inspector General, the head of such agency) shall submit to Congress a report on the compliance by the agency during the preceding year with the requirement for the head of the agency to identify certain procurement positions under section 27(f)(3) of the Office of Federal Procurement Policy Act (as added by subsection (a)).

(f) EFFECTIVE DATE.—(1) The amendments made by subsections (c) and (d) of this Act shall be effective on and after the date of enactment of this Act.

(2) The amendments made by subsections (a) and (b) of this Act shall be effective on and after 180 days after the date of enactment of this Act.

(3) Subsection (f) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)) shall have no force or effect during the period beginning on May 31, 1991, and ending 180 days after the date of enactment of this Act.

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## GARN AMENDMENT NO. 1030

Mr. WARNER (for Mr. GARN) proposed an amendment to the bill S. 1507, supra; as follows:

On page 17, line 6, insert before the period the following: ", reviewing applications for modifications of such permits and licenses, and carrying out oversight activities in relation to such permits and licenses".

## GORTON (AND OTHERS) AMENDMENT NO. 1031

Mr. WARNER (for Mr. GORTON, for himself, Mr. ADAMS, Mr. ROBB, and Mr. WARNER) proposed an amendment to the bill S. 1507, supra; as follows:

On page 322, between lines 10 and 11, insert the following:

(3) Naval Air Station Whidbey Island, Washington, three hundred units, $21,110,000, a project previously approved by the Navy.

(4) Dahlgren Naval Surface Warfare Center, Dahlgren, Virginia, one hundred fifty units, $11,000,000.

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## BUMPERS (AND BENTSEN) AMENDMENT NO. 1032

Mr. NUNN (for Mr. BUMPERS, for himself and Mr. BENTSEN) proposed an amendment to the bill S. 1507, supra, as follows:

On page 352, between lines 23 and 24, insert the following:

(d) RED RIVER ARMY DEPOT.—The authorization of appropriations for the Army for the Red River Army Depot, Texas, in section 2104(a)(3) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1619) is hereby transferred to the Secretary of Defense for modernization activities, construction activities, or modernization and construction activities in support of the supply distribution mission at the Red River Army Depot. The Secretary shall carry out such activities through the head of the Defense Logistics Agency.

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## CRANSTON AMENDMENT NO. 1033

Mr. NUNN (for Mr. CRANSTON) proposed an amendment to the bill S. 1507, supra, as follows:

On page 100, between lines 12 and 13, insert the following:

**SEC. 514. REVIEW OF PORT CHICAGO COURT MARTIAL CASES.**

The Secretary of the Navy shall initiate without delay a thorough review of the cases of all 258 individuals convicted in the courts-martial arising from the explosion at the Port Chicago (California) Naval Magazine on July 17, 1944. The purpose of the review shall be to determine the validity of the original findings and sentences and the extent, if any, to which racial prejudice or other improper factors now known may have tainted the original investigations and trials. If the Secretary determines that the conviction of an individual in any such case was in error or an injustice, then, notwithstanding any other provision of law, he may correct that individual's military records (including the record of the court-martial in such case) as necessary to rectify the error or injustice.

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## BREAUX (AND OTHERS) AMENDMENT NO. 1034

Mr. BREAUX (for himself, Mr. JOHNSTON, Mr. DECONCINI, and Mr. CONRAD) proposed an amendment to the bill S. 1507, supra, as follows:

On page 378, between lines 3 and 4, insert the following:

**SEC. 2804. CONVEYANCE OF CLOSED BASES TO NEIGHBORING COMMUNITIES.**

(a) Findings and Purposes.

(1) The Congress finds that—

(A) The Department of Defense has been directed to reduce the size and cost of the military and this can only be accomplished by closing military installations;

(B) A military installation is a part of the infrastructure of the community in which it is located and there is a long standing symbiotic relationship between a military installation and the community;

(C) The people in an impacted community have made substantial, long term investments of time, training, and wealth to support the military installations;

(D) The loss to an impacted community when a military installation is closed may be substantial and in such cases the Congress wishes to mitigate the damage to the impacted community;

(E) An impacted community knows best the needs of the community and the best way to use available resources to meet these needs consistent with existing national priorities; and

(F) Unfettered ownership of the real property associated with a closed military installation at the earliest possible time can partially offset the loss to a community which results when a military installation is closed.

(2) Therefore, it is the purpose of this section—

(A) To benefit communities impacted significantly when a military installation located in such communities is closed by authorizing the real and excess-related personal property on which the military installations are located to be conveyed to the impacted community as soon as possible after a decision to close the military installation is made but no later than 180 days after closure; and

(B) To provide significantly impacted communities a resource which will aid in mitigating the loss incurred by the community following a decision to close a military installation and which may be used by the impacted community, as the community deems appropriate, for industrial, commercial, residential, recreational, or public uses.

(b) IN GENERAL.—(1) Notwithstanding any other provision of law, the Secretary of Defense shall convey to an eligible political subdivision or subdivisions or State all right, title, and interest of the United States in the military installation closed pursuant to a base closure law in accordance with this section and the Comprehensive Environmental Response, Compensation, and Liability Act and the Solid Waste Disposal Act as determined by the Administrator of the Environmental Protection Agency.

(2) Even if the conditions set forth in paragraph (1) have been satisfied, the Secretary shall not convey such installation if the Secretary determines that the community or communities in the area of the real property to be conveyed are not experiencing or will not experience a significant adverse economic impact as a result of the closure of that military installation.

(c) DETERMINATIONS.—(1) The Secretary must make the determination referred to in subsection (b) in the case of a military installation as soon as practicable after the installation has been identified for closure, but in any event not later than the date on which the installation is closed.

(2) In determining whether a community is experiencing or will experience a significant adverse economic impact as a result of the closure of a military installation, the Secretary shall consider such objective evidence as the following:

(A) Declining real estate values.

(B) Increasing unemployment.

(C) Loss of revenue to the State and the community.

(D) Increasing rate of business failures.
(E) Significant decreases in total personal income.

(d) ADVANCE NOTICE TO ELIGIBLE STATES AND POLITICAL SUBDIVISIONS.—As soon as practicable after a military installation has been identified for closure, but in any event not later than the date on which the installation is closed, the Secretary shall transmit to the appropriate political subdivision, communities, counties and State to which property at such installation may be conveyed pursuant to this section advance notification of the Secretary's intention to make a conveyance of that property.

(e) ELIGIBLE STATES AND POLITICAL SUBDIVISIONS.—Property at a military installation that is to be conveyed pursuant to the requirement in subsection (b) shall be conveyed to a political subdivision or subdivisions or State in the following order of priority:

(1) To a political subdivision of a State that is designated in State law to receive the conveyance of such property and accepts the conveyance.

(2) If there is no political subdivision that satisfies the criteria in paragraph (1), then to the State in which the property is located if the law of that State designates the State to receive the conveyance of such property and the State accepts the conveyance.

(3) In the case of any real property for which neither a State nor a political subdivision of a State satisfies the criteria in paragraph (1) or (2), then to one or more political subdivisions of a state which the Secretary determines, after consultation with appropriate local officials, would best serve the interests of the residents of such subdivision or subdivisions and of the State in which the property is located, providing such subdivision or subdivisions accept such conveyance.

(4) In the case of any real property for which no subdivision or subdivisions or State accept such conveyance, then the Secretary shall offer the property to other departments and agencies of the Federal government.

(f) PROPERTY TO BE CONVEYED.—In addition to the conveyance of real property to a community or State pursuant to this section, the Secretary shall convey any related personal property that the Secretary determines is appropriate for use by the recipient in connection with the recipient's use of the real property.

(g) CONVEYANCE DEADLINE.—Except as provided in subsection (h), all property to be conveyed pursuant to this section in connection with the closure of a military installation shall be conveyed within 180 days after the date on which the installation is closed.

(h) PROPERTY NOT SUITABLE FOR CONVEYANCE.—The Secretary shall sever from the real property of a closed military installation to be conveyed pursuant to subsection (b) that real property which is not suitable for conveyance and make such transfers over a period longer than that which would otherwise be permitted under subsection (g). Property is not suitable for conveyance under the following conditions:

(1) When the political subdivision or state will not accept conveyance of a part of the real property of a closed military installation; or

(2) If the Administrator of the Environmental Protection Agency determines that such conveyance does not comply with the requirements of either the Comprehensive Environmental Response Compensation and Liability Act of 1980 or the Solid Waste Disposal Act; or

(3) When necessary to ensure completion of environmental restoration and mitigation projects.

(i) CONSIDERATION NOT TO BE REQUIRED.—No consideration may be required for a conveyance of property pursuant to this section.

(j) WAIVER AUTHORITY.—(1) Subject to paragraph (2), the President may waive in whole or in part the requirement to convey property at a military installation under subsection (b) if the President—

(A) determines that the continuation of the United States interest in such property—

(i) is vital to national security interests; or

(ii) the value of the base is so high that a conveyance to the political subdivision or state would constitute an undue windfall to the community and would not be necessary for the economic recovery of the region, provided that the number of waivers exercised under this Act do not exceed a cumulative total of five military installations for each package of closures approved by a commission under the Base Closure law. Provided further, a waiver in part shall not count against this limit if the value of the property reserved does not exceed 25 percent of the total value of such installation or if the appropriate political subdivision or state agrees with the reservation; and

(B) transmits to the Committees on Armed Services of the Senate and the House of Representatives a certification of such determinations together with the reasons for such determinations.

(2) A determination and certification in the case of the closure of any military installation shall be effective only if made before the earlier of—

(A) the date on which the installation is closed; or

(B) December 31 of the year following the later of the year in which the closure of that installation is approved by the President.

(3) The President may extend the deadline for making a determination and certification under paragraph (2) for not more than two successive periods of 90 days by transmitting to the congressional defense committees a notification of the extension before the end of the deadline or extended deadline, as the case may be.

(4) The President may withdraw a waiver under paragraph (1) in the case of any military installation. Not later than 180 days after the withdrawal of the waiver, the Secretary of Defense shall make the conveyance required by subsection (a) in accordance with this section.

(k) CONTINUING RESPONSIBILITY OF THE DEPARTMENT OF DEFENSE.—Prior to and after any conveyance of real property of a closed military installation pursuant to this section, the Secretary of Defense in consultation with the political subdivision or state shall be responsible for the following matters:

(i) To provide economic adjustment and community planning assistance including assistance in conducting public hearings to decide the appropriate use of a closed military installation to communities near the closed military installation until such time as the economic stability of such communities is achieved, as determined by the Secretary.

(ii) To comply with the Comprehensive Environmental Restoration Compensation Liability Act of 1980 and the Solid Waste Disposal Act in consultation with the Administrator of the Environmental Protection Agency.

(iii) To continue to carry out environmental restoration and mitigation activities relating to uses made of such installation before closure.

(l) SOURCES OF FUNDING.—The Secretary may expend any funds in the Base Closure Account to carry out the responsibilities referred to in subsection (k) and the Secretary shall notify the congressional defense committees in advance of the obligation of funds for such purpose.

(m) IMPROVEMENT OF PROPERTY PENDING CONVEYANCE.—(1) Notwithstanding any other provision of law, the Secretary of Defense and the head of any other department or agency of the Federal Government may continue, on and after the applicable date referred to in paragraph (2), to obligate funds (to the extent available) for making improvements to the property that has not been conveyed that will facilitate the conveyance of the property and are consistent with the use to be made of the property by the recipient of the conveyance.

(2) Paragraph (1) applies in the case of property at a military installation on and after the later of the date on which the closure of that installation is approved by the President.

(n) DEFINITIONS.—In this section:

(1) The term "military installation" has the meaning given such term in section 2687(e)(1) of title 10, United States Code.

(2) The term "base closure law" means the following:

(A) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 102-510; 104 Stat. 1808; 10 U.S.C. 2687 note).

(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(C) Section 2687 of title 10, United States Code.

(3) The term "base closure account" means the following:

(A) The Department of Defense Base Closure Account established by section 207(a) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(B) The Department of Defense Base Closure Account 1990 established by section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 102-510; 104 Stat. 1815; 10 U.S.C. 2687 note).

In section 2(b), amend the table of contents by inserting after the item relating to section 2803 the following new item:

Sec. 2804. Conveyance of closed bases to neighboring communities.

## INTERNATIONAL MORITORIUM ON THE USE OF LARGE-SCALE DRIFT NETS

### STEVENS AMENDMENT NO. 1035

Mr. WALLOP (for Mr. STEVENS) proposed an amendment to the concurrent resolution (H. Con. Res. 113) to express the sense of the Congress that the President should seek an international moritorium on the use of large-scale drift nets called for in U.N. Resolution 44-225 while working to achieve the U.S. policy of a permanent ban on large scale drift nets, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

Whereas the policy of the United States is that there should be a permanent ban on destructive fishing practices, in particular large-scale driftnet fishing, by persons or

vessels fishing beyond the exclusive economic zone of any nation;

Whereas the best available scientific data indicates that large-scale driftnet fishing incidentally kills thousands of endangered sea turtles, hundreds-of-thousands of marine mammals and millions of non-target fish;

Whereas the United Nations, through General Assembly Resolutions 44-225 and 45-197, have called upon all nations to impose a moratorium on large-scale driftnet fishing beyond the exclusive economic zone of any nation by June 30, 1992;

Whereas the moratorium called for by the United Nations will not be imposed only if concerned parties agree that effective conservation and management measures exist which will prevent unacceptable impacts and ensure the conservation of living marine resources;

Whereas the available data indicates that effective conservation and management measures sufficient to prevent unacceptable impacts do not exist;

Whereas some nations may continue to engage in large-scale driftnet fishing after June 30, 1992, on the pretext that effective conservation and management measures exist or that they are engaging in "scientific" fishing;

Whereas some nations are permitting their nationals or vessels to expand the practice of large-scale driftnet fishing to new areas of the World's oceans and seas, including the North and South Pacific Ocean, the Atlantic Ocean, the Indian Ocean, and the Caribbean Sea; and

Whereas the continuation of large-scale driftnet fishing beyond the exclusive economic zone of any nation is contrary to sound stewardship of the world's living marine resources, the intent of United Nations General Assembly Resolutions 44-225 and 45-197, and the established policy of the United States: Now, therefore, be it

*Resolved by the House of Representatives (the Senate concurring),* That it is the sense of the Congress—

(1) that the President should take strong measures, including use of appropriate sanctions, to encourage other nations to cease all large-scale driftnet fishing beyond the exclusive economic zone of any nation by June 30, 1992; and

(2) that the President should coordinate the efforts of all Federal agencies, the Congress, affected coastal States, the fishing industry, and the conservation community to work with the United Nations and individual concerned nations to bring about, with respect to waters beyond the exclusive economic zone of any nation—

(A) the conservation of fishery stocks, and

(B) a permanent ban on destructive fishing practices, in particular large-scale driftnet fishing.

## DRIFTNET MORATORIUM ENFORCEMENT ACT

### PACKWOOD (AND OTHERS) AMENDMENT NO. 1036

Mr. WALLOP (for Mr. PACKWOOD, for himself, Mr. KERRY, Mr. STEVENS, Mr. ADAMS, and Mr. GORTON) proposed an amendment to the bill (S. 884) to impose economic sanctions against countries that fail to eliminate large-scale driftnet fishing, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

The Act may be cited as the "Driftnet Moratorium Enforcement Act of 1991".

**SEC. 2. POLICY AND FINDINGS.**

(a) POLICY.—It is the stated policy of the United States to—

(1) implement United Nations General Assembly Resolution numbered 44-225, approved December 22, 1989, which calls for an immediate cessation to further expansion of large-scale driftnet fishing and for a June 30, 1992 moratorium on the use of large-scale driftnets beyond the exclusive economic zone of any nation.

(2) prevent the further expansion of large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

(b) FINDINGS.—The Congress finds that—

(1) despite worldwide pressure against their use, large-scale driftnets continue to be used by persons or vessels fishing beyond the exclusive economic zone of any nation;

(2) large-scale driftnet fishing in the North Pacific, the Atlantic, the Indian, and the South Pacific Oceans beyond the exclusive economic zone of any nation is expanding in direct contravention of United Nations General Assembly Resolutions numbered 44-225 and 45-197;

(3) nations engaged in large-scale driftnet fishing export fish and fish products to the United States; and

(4) in order to ensure that the permanent worldwide ban on large-scale driftnet fishing beyond the exclusive economic zone of any nation takes effect on June 30, 1992, the United States should take the actions described in this Act and encourage other nations to take similar action.

**SEC. 3. SANCTIONS FOR FAILURE TO TERMINATE DRIFTNET FISHING.**

(a) CERTIFICATION OF INTENT.—Not later than January 1, 1992, the President shall certify to the Congress each nation whose nationals or vessels are known to engage in large-scale driftnet fishing and which has not officially notified the United States that, not later than June 30, 1992, such nation will terminate large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

(b) NOTIFICATION OF NONCOMPLIANCE.—Beginning July 1, 1992, the President shall immediately notify the Congress of any nation whose vessels or nationals are engaged in large-scale driftnet fishing beyond the exclusive economic zone of any nation on or after such date.

(c) ACTION BY THE PRESIDENT.—

(1) CERTIFICATION UNDER THE FISHERMEN'S PROTECTIVE ACTION OF 1967.—If a certification is made under subsection (a) with respect to any nation, such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)). Upon such certification all other applicable provisions of section 8 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978), including subsections (b) through (g) thereof, shall apply.

(2) PROHIBITION AGAINST IMPORTING FISH AND FISH PRODUCTS.—If a notification is made under subsection (b) with respect to any nation, the President shall direct the Secretary of the Treasury to immediately prohibit the bringing or importation into the United States of fish and fish products from such nation. Not later than 15 days after such notification, the President shall advise the Congress of any action taken by the President under this subsection. Subsections (c), (e), (f), and (g) of section 8 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978 (c), (e), (f), and (g)) shall apply with respect to any prohibition imposed under this subsection.

(d) ADDITIONAL ECONOMIC SANCTIONS.—

(1) IN GENERAL.—If—

(A) a notification is made under subsection (b) and the President determines that prohibitions under subsection (c)(2) are insufficient to cause the involved nation to terminate large-scale driftnet fishing beyond the exclusive economic zone of any nation; or

(B) a nation against which an action has been taken under subsection (c) retaliates against the United States as a result of such action,

the President is authorized to impose additional economic sanctions against such nation.

(2) SCOPE OF ADDITIONAL ECONOMIC SANCTIONS.—The additional economic sanctions authorized under paragraph (1) include the imposition of—

(A) duties, import bans, or other import restrictions on the goods of a nation to which paragraph (1) (A) or (B) applies; and

(B) fees or restrictions on the services of such nation, notwithstanding any other provision of law.

(3) NOTIFICATION BY PRESIDENT.—The President shall notify the Congress within 15 days, if either—

(A) circumstances as described in subparagraph (1) (A) or (B) occur; or

(B) the President imposes additional economic sanctions under this subsection.

(e) DURATION OF RESTRICTIONS.—Any sanction imposed against a nation under subsection (c)(2) or (d) shall remain in effect until such time as the President certifies to the Congress that such nation has terminated large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

(f) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) LARGE-SCALE DRIFTNET FISHING.—The term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of one and one-half miles or more is place in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(2) FISH AND FISH PRODUCTS.—The term "fish and fish products" has the meaning given the term "fish products" in section 8(h)(4) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(h)(4)).

**SEC. 4. REPORT TO CONGRESS.**

Beginning on January 1, 1993, the President shall include in the report to Congress submitted under the Driftnet Act Amendments of 1990 (16 U.S.C. 1826) information with respect to—

(1) whether nationals or vessels of a nation have engaged in large-scale driftnet fishing beyond that nation's exclusive economic zone during the 12-month period preceding the date of such report; and

## NOTICES OF HEARINGS

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a markup on Friday, August 2, 1991, beginning at 10:30 a.m., in 485 Russell

Senate Office Building on S. 1530, a bill to authorize the integration of employment, training and related services by Indian tribal governments.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. BREAUX. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, August 1, 1991, at 10 a.m.

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

SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION, AND INFRASTRUCTURE

Mr. BREAUX. Mr. President, I ask unanimous consent that the Subcommittee on Water Resources, Transportation, and Infrastructure, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Thursday, August 1, beginning at 10 a.m., to conduct a hearing on a proposed Department of Transportation headquarters; the relationship between the Judiciary and GSA for the provisions of space for the courts; and oversight of GSA's planning and management procedures and the condition of the Federal building fund.

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

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BREAUX. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate 9:30 a.m., August 1, 1991, to receive testimony on S. 1156, the Federal Lands and Protection Act.

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

SUBCOMMITTEE ON PATENTS, TRADEMARKS, AND COPYRIGHTS

Mr. BREAUX. Mr. President, I ask unanimous consent that the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Thursday, August 1, 1991 at 3 p.m., to hold a hearing on patent extensions.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BREAUX. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be authorized to meet on Thursday, August 1, at 9:30 a.m., for a hearing on the subject: DOE procurement and subcontracting.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BREAUX. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, August 1, 1991, at 4:30 p.m., to hold a closed hearing on Intelligence Matters.

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

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. BREAUX. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on August 1, 1991, beginning at 9:30 a.m., in 1310 Longworth House Office Building, on H.R. 1426 and S. 1036, Lumbee Recognition Act.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BREAUX. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on August 1, 1991, at 10 a.m. on S. 22—Interstate Greyhound Racing Act of 1991.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. BREAUX. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate Thursday, August 1, 1991, at 9 a.m. to conduct a markup of S. 534, The Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991.

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

SUBCOMMITTEE ON TERRORISM, NARCOTICS, AND INTERNATIONAL OPERATIONS

Mr. BREAUX. Mr. President, I ask unanimous consent that the Subcommittee on Terrorism, Narcotics and International Operations of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, August 1, 1991, at 2 p.m. to conduct a hearing on narcotics and foreign policy implications of the BCCI affair.

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

SUBCOMMITTEE ON TERRORISM, NARCOTICS, AND INTERNATIONAL OPERATIONS

Mr. BREAUX. Mr. President, I ask unanimous consent that the Subcommittee on Terrorism, Narcotics and International Operations of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, August 1, 1991, at 10 a.m. to conduct a hearing on narcotics and foreign policy implications of the BCCI affair.

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

SPECIAL COMMITTEE ON AGING

Mr. BREAUX. Mr. President, I ask unanimous consent that the Special Committee on Aging, be authorized to meet during the session of the Senate on Thursday, August 1, 1991, at 10 a.m. to hold a hearing entitled "Forever Young: Music and Aging."

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

## NOTICE OF INTENTION TO AMEND THE STANDING RULES OF THE SENATE

Mr. DOLE. In accordance with Rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to amend the Standing Rules of the Senate, with the following amendment:

*Resolved*, Rule XXXVII of the Standing Rules of the Senate is hereby amended to add a new paragraph as follows:

"Notwithstanding section 501(c) of Title V of the Ethics in Government Act of 1978 as amended, honoraria may be paid on behalf of a Member, officer or remployee of the United States Senate to a charitable organization, without any restriction on the amount of such honoraria.

"No honoraria paid on behalf of a Member, officer, or employee of the United States Senate shall be made to a charitable organization from which such individual or a parent, sibling, spouse, child or dependent relative of such individual derives any financial benefit."

The amendment made by this resolution to Rule XXXVII of the Standing Rules of the Senate shall be effective immediately upon enactment of the fiscal year 1992 legislative branch appropriations bill.

## ADDITIONAL STATEMENTS

### WOMEN PROFESSIONALS IN THE U.S.S.R.

• Mr. WELLSTONE. Mr. President, I would like to bring my colleagues' attention to an article which appeared in the Christian Science Monitor on January 23, 1991 by Drs. Anne H. Cahn and Catherine M. Kelleher. They are, respectively, Senior MacArthur Scholar and director, Center for International Studies of the School of Public Affairs, the University of Maryland.

This enlightening article reminds us that despite the accomplishments of perestroika and glasnost, Soviet women professionals still face tremendous obstacles to career advancement and fulfillment.

The article follows:

[From the Christian Science Monitor, Jan. 23, 1991]

WOMEN PROFESSIONALS FACE OBSTACLES IN USSR

(By Anne H. Cahn and Catherine M. Kelleher)

Amid well-deserved enthusiasm for the freedoms wrought by perestroika and glasnost, little notice has been given to the very few benefits trickling down to Soviet women professionals.

Soviet women find themselves caught in a double bind of the harsh realities of daily

family life—worsened by massive shortages and hours of standing in line—and special obstacles they, as women, face to career advancement.

This is the dominant conclusion reached by our group of eight women, all experts in the field of international security, during a week's visit to Moscow. Sponsored by the Women In International Security Project of the Center for International Security Studies at Maryland and by the Committee of Soviet Scientists for Global Security; our delegation met with researchers at the Academy of Sciences-affiliated Institute of World Economy and International Affairs, Institute of the USA and Canada, and Institue of State and Law, as well as the Committee of Soviet Women. We discussed the constraints and opportunities for women's careers in international relations, and explored avenues of interdisciplinary collaborations.

Life in the Soviet Union has never been easy for women, personally or professionally. the "equality" granted by the Soviet Constitution was and is nominal. While 92 percent of employable Soviet women work or study out-side the home, they also perform a full 90 percent of all domestic chores.

The new Union Supreme Soviet has a Committee for the Protection of Women and another Committee on Families, but no women deputies serve on them. On the republic level, membership for women on committees overseeing foreign or defense policies is, for most, a far-off dream. There are only two women with ambassadorial rank and no women visible in either the military or civilian elites in the Defense Ministry.

While academic institutions are increasing opportunities for women researchers, the pace of change is still grindingly slow. As of yet, there are no women directors. Women researchers are rarely included in official delegations or professional exchanges abroad. Little of their research has been seen outside the Soviet Union. Few of these women are even known to their Western colleagues—a situation we hope to remedy in the field of international peace and security studies.

Soviet women "instituteniks" are now forming professional self-help networks, breaking down the barriers of hierarchy and the often competitive isolation of most institutes.

Barred at the front door, others have found "side" doors—in the media, in grass-roots institutions, in environmental organizations—to express their concerns about the economy and ecology and the potential use of Soviet force in the Gulf, as well as the need to conceptualize new core values for the hard times ahead.

These "side" specialties turn out to be those most crucial for a changed Soviet future. Soviet women—conservative and liberal—have become the nation's experts on ethnicity and nationality differences, methods of peaceful conflict resolution, human rights, mental health laws, and the requirements for national and international economic integration in the free market system.

Nevertheless, as the Soviet economy tumbles, these women face straitened circumstances. We in the West can respond in one of two ways. We can offer such enticing opportunities at our universities and research institutes for Soviet researchers that the best and brightest will be irresistibly pulled westward. Or, preferably, we can establish new means of individual and institutional collaboration that will enrich both Soviet and Western intellectual life.

What is needed now is a commitment to the fullest possible development of Soviet human capital, women as well as men. One example would be to create exchange programs of six to 12 months each to enable Soviet and Western researchers to work at each other's institutions for extended periods of time. Such reciprocal visits not only will help develop a much needed dialogue, but will underpin the development of joint projects to attack the many immediate policy problems facing both nations.

What we found most impressive about the women we met was not their substantive accomplishments, though those were indeed significant, but their struggle as individuals to deal with the problems of perestroika and glasnost. "We are looking at the nature of values from a new perspective. We are used to being given things from above: orders, jobs, instructions," said a professor at the State and Law Institute.

"Now it's not enough to be obedient," said one long-time party member." Our future lies in defending freedom of choice and assuming individual responsibility with all of its consequences."

## IN RECOGNITION OF NED FOX

• Mr. SEYMOUR. Mr. President, I rise today in recognition of Ned Fox, the executive director of the Cypress Chamber of Commerce, on the occasion of his retirement after 6 years of service to the Cypress chamber.

During his long and distinguished career, Ned's dedication to furthering the needs of the local business community has helped make Orange County a more prosperous, as well as a more pleasant place to live.

It is individuals like Ned who have made California the economic envy of the rest of the Nation. We make more, grow more, and serve more than any other State, and we are proud that we do so with a culturally diverse citizenry that pulls together for the common good.

I ask the Senate to join with me in congratulating Ned Fox on his years of service and wishing him our best as he begins yet another chapter of his life.•

## IN TRIBUTE TO TONY TRAVATO

• Mr. CHAFEE. Mr. President, I rise today to pay tribute to Tony Travato of Westerly, Rhode Island. Tony Travato was honored for his outstanding civil service on Saturday, May 4, 1991, at the Calabrese Club in Westerly, RI.

Tony Travato was born in Westerly on February 1, 1925. As a youth, he attended the Westerly public school and is a graduate of the Cheshire Academy. Thereafter, Tony Travato attended Rhode Island State College, now the University of Rhode Island, and studied clothing design in New York City. He graduated from the American Gentleman Designing School.

As a citizen of Westerly, Tony Travato has been a invaluable asset to the community. He has been an active political leader; serving as State senator, beach commissioner, district moderator, as well as being a member of the town council. In addition to his participation in a variety of political organizations, Tony Travato is recognized for 20 years of volunteer work at Westerly Hospital. He was also instrumental in fostering local renovation, including tree planting.

Tony Travato's dedication to Westerly exemplifies his sincerity, commitment, and love for his neighbors and the community. His participation in a broad spectrum of local arenas attests to the fact that he is a model citizen.

I hope all my colleagues will join me in applauding Tony Travato in honor of his local efforts on behalf of the Westerly community. All Rhode Island is proud of it's native son.•

## IN RECOGNITION OF SHANE SALERNO

• Mr. SEYMOUR. Mr. President, I rise today in recognition of a constituent of mine from Encinitas, CA, whose work has contributed greatly to making San Diego County a safer place for kids.

He has initiated programs to promote traffic safety, find missing children, and keep kids off drugs.

He has been lauded by local newspapers and praised by public officials.

He has won awards and earned the appreciation of his community.

He is, in fact, a kid himself.

Shane Salerno is an 18-year-old who just graduated from high school and just completed his first public affairs documentary, "Sundown: the Future of Children and Drugs." He is now at work on his second, "Broken Hearts—Forgotten Dreams," a video on missing children.

Shane's video projects are just part of his campaigns to promote the health and safety of children. He is asking local newspapers to publish more information on missing children and working with the local Rotary Club to gain national distribution of his antidrug film.

This Nation has thousands of points of light like Shane Salerno: volunteers who make a difference in the lives of so many of their fellow Americans.

I ask the Senate to join me in extending our commendation to Shane for his efforts and our best wishes for his future success.•

## RETIRED SENIOR VOLUNTEER PROGRAM PRAISED FOR 20 YEARS OF SERVICE

• Mr. COATS. Mr. President, this summer the Retired Senior Volunteer Program [RSVP] observes its 20th anniversity of service to millions of Americans across the Nation. The Administration on Aging developed RSVP in 1971 as a way for senior citizens to get involved in community service. Ini-

tially only 11 RSVP projects were formed around the Nation, each with a handful of volunteers.

From those modest beginnings, few could have foreseen the profound benefits that RSVP would bring to America. Few could have predicted the great leadership that RSVP would provide by engaging hundreds of thousands of retired citizens in community service. These older volunteers form a tremendous community of talents serving individuals and organizations across the United States.

Today more than 418,000 senior volunteers work in one of nearly 750 projects around the country. The types of service that RSVP volunteers provide are almost as varied as the volunteers themselves: adult based education, tax aid and consultation services, hospice care, home repair, utilities relief, substance abuse counseling, home visitation and long-term care, teaching first aid, conducting employment workshops, telephone reassurance, refugee assistance, neighborhood watch, service to veterans through the Veterans' Administration and youth through literacy and substance abuse education projects. This is by no means an exhaustive list of activities that RSVP volunteers are engaged in.

The benefits of RSVP are abundant and mutual. Not only do needy beneficiaries receive important services but the senior volunteers obtain the rewards of remaining active; moreover, they help bring meaning and purpose to their own lives as well as to others. Over the past 20 years, Retired senior volunteers have contributed a cumulative 875 million hours of volunteer services. All of this has been accomplished in spite of the fact that RSVP volunteers are not compensated.

Today RSVP addresses community needs in all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. In my own State of Indiana, 9,544 senior citizens serve as RSVP volunteers in 23 communities across the State. Last year, these Hoosier volunteers contributed more than 1.5 million volunteer hours. The National Center for Volunteerism estimated that the real dollar contribution of this service amounts to $15.7 million.

The services described above go well beyond statistics. The human dimension is equally impressive. In Elkhart, IN, the RSVP project has recently been recognized as one of three exemplary drug prevention projects in the nation. There senior volunteers work with the Elkhart County Court Services to provide counseling to adults and adolescents, many of whom are on probation for drug and alcohol related offenses. "It shows them—the probationers—that someone cares that's not involved with the court system," said Ann Beans, director of the Elkhart RSVP.

In total, the Elkhart RSVP has 650 volunteers working with 66 agencies. Two other Elkhart RSVP projects that have received special recognition include volunteers who worked with the city of Elkhart on various environmental projects—including conducting a survey and educating residents on how to detect pollution sites—and RSVP volunteers working with the Service Corp of Retired Executives [SCORE] to counsel small businesses.

In New Albany, IN, approximately 700 volunteers serve four countries in south central Indiana. This summer RSVP volunteers have cut 40,000 ribbons to distribute to local businesses and volunteers for the Red Ribbon Campaign in October, an annual national event to make citizens aware of the harmful effects of substance abuse and addiction. Volunteers also deliver thousands of meals weekly to homebound elderly. "Sometimes the volunteer is the only person they see all week and the homebound person often becomes very close to the volunteer, said Matie Watts, director of the New Albany RSVP Program.

The success of these two Indiana RSVP projects well documents that we must continue to use our fastest growing, national resource—our senior citizens. Seniors are healthier and more active than ever before. They bring more and more needed skills and experience to help solve community problems. Furthermore, RSVP volunteers provide a renewed spirit to the term "service": a spirit of neighborhood and a deep belief in the power of the individual to make a difference. We must continue to enrich our Nation with their talents and willingness to serve.

RSVP is to be commended for its outstanding achievements over the past 20 years. It is a tribute to its volunteers that so much has been accomplished in two decades of compassionate and selfless service to others.•

## COMMENDING GEN. CALVIN A.H. WALLER

Mr. GORTON. Mr. President, I want to take a moment to recognize Lt. Gen. Calvin A.H. Waller, commanding general I Corps and Fort Lewis, and commend him for his outstanding service to both the U.S. Army and his country.

General Waller's leadership as deputy commander under Gen. H. Norman Schwarzkopf during Operation Desert Storm not only yielded a great victory in the field, but also back home led to a renewed American sense of self-confidence, which we have not seen and celebrated since the end of World War II.

General Waller has demonstrated to our nation in his distinguished 32-year career in the U.S. Army, the importance of perserverance, the meaning of heriosm, and the pride of our soldiers. During his prominent career, General Waller served tours in Korea as training officer for the Eighth U.S. Support Command, and in Vietnam as joint operations officer for the Military Assistance Command. Most notably, General Waller has been assigned to Fort Lewis, WA, three times, beginning with this first assignment on active duty in 1960, and ending most significantly with his latest assignment as commanding general of I Corps and Fort Lewis.

General Waller has been both an excellent role model for young minorities in the Army, and as a soldiers' general who looked after the troop's needs.

Mr. President, it is with great pride that I salute General Waller, and wish him the same success in his retirement as he has experienced in the U.S. Army.

## HARRY HAMM TRIBUTE

• Mr. ROCKEFELLER. Mr. President, I rise today in tribute to an individual whose tireless efforts and endless dedication have been of profound benefit to West Virginia's Ohio River Valley.

Harry Hamm never held public office, though many of us who do are indebted to him; he is not a certified urban planner, though he helped save the city of Wheeling; he never played the role of great philanthropist, but hospitals and health care throughout the Ohio Valley are saving lives because he cared.

Harry ran a newspaper, the Wheeling News-Register, and he ran it like the old newshound he was. I do not think Harry trusted anybody else to know what Wheeling and West Virginia needed done—so every day he helped us out. Harry was multipartisan. He would give both sides hell until they came around to seeing things the right way. His way.

Wheeling is a grand old city, where a great history and Victorian elegance clash daily with modern economics and tough realities. Harry's spirit and pride in his hometown have helped Wheeling win that struggle again and again. But more, he epitomizes that blend of elegance and hard edge that keeps Wheeling moving vibrantly ahead.

I am still paying hospital bills from the broken bones he gave me while lining up my support, as Governor, for endless Oglebay Park improvements.

I was lucky. He liked me.

And like everybody he likes, he gives me a lot of advice—whether I ask for it or not. I used to drop by his house in the evening, after he had put the paper to bed. We would sit in the living room and Harry would tell me what I was doing right or what I was doing wrong, and what the folks around Wheeling were saying.

I know I can count on Harry for one thing—straight talk. He isn't just a newspaperman, he's a crusader. And his crusade is the beautiful city of Wheeling, WV. Harry really believes that running a newspaper is more than ad revenues and circulation. It's an

unbounded opportunity to serve the community you love.

While mayors and council members and planning boards and even U.S. Senators come and go, while agendas change and votes are counted, people like Harry Hamm remain. Their dedication makes communities work. I do not know a city in America that came through tough times better than Wheeling. Harry's struggle for better health care, his fight for Oglebay Park, and his involvement in Wheeling 2000 have made Wheeling a better city in ways you feel just walking down Main Street.

If you spend more than a minute or two with Harry, you feel a sophistication and notice an eccentricity, that would have made him feel at home in any city in the world. But he could no more have left Wheeling for New York or London, than he could have given up news writing.

He is a devout Catholic and a loving husband and father with deep roots in his community. Many evenings he and his wife Mary fed me dinner. I felt almost like part of their family, part of their lives. I felt like I was their friend.

It is great to see Harry back in print.●

## NATIONAL GROCERS ASSOCIATION GROCERS CARE AWARDS

● Mr. BOREN. Mr. President, I wish to bring to the attention of the Senate the community contribution of the independent retail grocers and their wholesalers.

In past years, through passage of the National Grocers Week, the House and Senate recognized the important role these businesses play in our economy. The week of June 23–29 commemorated the sixth year that National Grocers Week was observed by the industry to encourage grocers involvement in private sector initiatives and to recognize their community contributions. The theme of National Grocers Week was "Grocers Care * * *".

During that week, the National Grocers Association and heads of philanthropic and consumer groups honored outstanding independent retail and wholesale grocers, their State association executives and food industry manufacturers for their community service with the NGA "Grocers Care" Awards.

According to Thomas K. Azucha, president and CEO of the National Grocers Association, "Active leadership with community service projects reflect the commitment retail and wholesale grocers and manufacturers have to the communities they serve." This year's theme emphasizes that "Grocers Care * * *" about "A Healthy America," for involvement in health related charities and nutritional programs; "A Clean America," for commitment to recycling and the environment; and "A Proud America," for the industry's civic and patriotic endeavors.

The honorees follow:

GROCERS CARE AWARD HONOREES

The "Grocers Care" theme will prevail during the N.G.A. Washington Conference activities beginning Sunday, June 23, in Washington, D.C. Representatives from companies, organizations, and associations around the United States will be honored. These honorees include:

Alabama: Peter Gregerson, Sr., Gregerson's Foods, Gadsden;

Alaska: Roger Hames, Hames Corporation, Sitka;

Arizona: Noah Billings, Food City, Phoenix; Thomas R. Shope, Shope's IGA, Coolidge;

Arkansas: Roy Foster, Jr., Foster's Foods, Hot Springs village; Jerry Davis, Affiliated Food Stores, Little Rock;

California: Tony You, Bargain Food Basket, Costa Mesa; Mike Shalabee, R. Ranch Market, Santa Anna; Jamal Hamideh, Oxnard Ranch Market, Oxnard; Anthony Spano, Red & White Superette, Oceanside; John Denney, Denney's Market, Bakersfield; Mark Kidd, Mar-Val Food Stores, Lodi; Everett Dingwell, Certified Grocers of California, Los Angeles;

Colorado: Eugene Andersen, Andersen's Star Market, Hudson; Harold Kelloff, Kelloff's Food Market, Alamosa;

Delaware: Horace Cook, Cook's of Dover, Dover;

District of Columbia: James Beakey, NCB Capital Markets;

Florida: Jim Kondor, Kondor's Thriftway of Winter Haven, Winter Haven; Ted Franklin, Franklin's Great Valu, Naranja; Morris Schwartz, Morris Shurfine, Ft. Lauderdale; W.T. Huntley, Huntley's Jiffy Stores, Palataka; Lorena Jaeb, Pick Kwik Food Stores, Mango; Jack Hollrah, Certified Grocers of Florida;

Georgia: Alan Haddock, Haddock's Food Store, Macon;

Hawaii: Wayne Teruya, Times Supermarkets, Honolulu; Glenn Kaneshiro, Food Fair Supermarket #2, Hilo;

Idaho: Bill Long, Waremart Inc., Boise;

Illinois: Richard Bellettini, Bellettini Foods, Coal City; Robert Walker, Walker's Supermarkets, Mattoon; Harold Greenberg, Ceritifed Grocers Midwest, Hodgkins; Robert Bridwell, Bridwell's Supermarket, Paris;

Indiana: Larry Contos, Pay Less Super Markets, Anderson; Jim Holdren, Hank's Supermarket of Marion, Marion; William G. Reitz, Scott's Food store, Fort Wayne;

Iowa: Robert Hand, Dahl's Foods, Des Moines; Duane Godfrey, Roy & Scotty's Super Valu, Council Bluffs; James Scheer, Jim & Dean's Town & Country, Council Bluffs; Doug Fallgatter, Fallgatter's Market, Northwood; Mick Gabrielson, We 3 Market, Britt; James Borders, Jim's Food Mart, Tabor; Robert Cramer, Fareway Stores, Inc., Boone; Jerry Fleagle, Fleagle Foods, Waterloo; Mary Rooney, Payless Foods, Dyersville; Scott Havens, Plaza Food Center, Norwalk; Dick Maxwell, Joyce's Foodland, Sac City; Ron Pearson, HyVee Food Stores, Chariton; Dave Wilson, Scrivner of Iowa, Laurens; Chuck Ramsbacher, Nash Finch Company, Cedar Rapids; Gene Foltz, Super Valu Stores, Inc., Des Moines; Matt Andersen, Liddle's Super Valu Foods, New Hampton; Phyllis Pals, P & G Market, Belmond; John Daugherty, Daugherty's Market, Adel;

Kansas: Fred Ball, Ball's Super Market, Kansas City, KS: Arnie Graham, Reebles Food Market, Emporia; James Baska, Associated Wholesale Grocers, Kansas City;

Kentucky: William Gore, Gore's Foodland, Paducah; Thomas Litzler, Remke's Market, Fort Mitchell; Bruce Chesnut, Laurel Grocery Company, East Bernstadt; Roy Potts, Bluegrass Coca-Cola, Louisville; Douglas Saylor, Saylor Brothers, Manchester; Kenneth Techau, Techau's Inc., Cynthiana; Lee Markwell, Jr. Markwell Supermarkets, Louisville; Bill Cundiff, Bestway of Whitley City, Whitley City; Vivian Gentry, Houchens Industries, Bowling Green; Charles Lynxwiler, Piggly Wiggly Super Market, Mayfield;

Louisiana: Donald Rouse, Jr., Rouse Supermarkets, Thibodeaux; M. Paul LeBlanc, Pay-Less Supermarket, Gonzales; Hillar Moore, Associated Grocers, Baton Rouge; Barry Breaux, Breaux Mart, Metairie; Dale Matherne, Longview Supermarket, Paulina;

Maryland: Stephen Denrich, Valu Food Inc., Baltimore; Roy Selby, Selby's Market, Poolesville; Thomas Smith, Tom's Super Thrift, Cardiff;

Michigan: Robert DeYoung, Sr., Fulton Heights Foods, Grand Rapids; Patrick Quinn, Spartan Stores, Grand Rapids; Frank Arcori, VEGAS Food Center, Harper Woods; Terry Lutke, Ebels Family Center, Falmouth;

Minnesota: Tom Harberts, Byerly's Inc., Edina; Stephen Barlow, Sr., Barlow Foods, Rochester; Don Wetter, Coborn's, St. Cloud; James Maus, Maus Foods, Monticello;

Missouri: Paul Blesi, Central Markets Inc., Sullivan; Danny Kays, Raytown United Super, Raytown; Donald Woods, Jr., Woods Super Market, Bolivar; Perry Underwood, 24 Hiway Thriftway, Independence; Shelley Lynch, Bole's IGA Grocery Company, Kansas City;

Montana: Charlean Keller, Kon's IGA, Billings; Mike Novak, Mike's IGA, Chester;

Nebraska: Richard Juro, No Frills Supermarkets, Omaha; James Clarke, Jim's Foodmart, Aurora; William Wiedemeyer, United A.G. Cooperative, Omaha;

New Hampshire: Ralph Stoddard, Ralph's Supermarket, Charlestown; Robert Fuller, Fuller's Market, West Thornton; Charles Butson, Butson's Supermarkets, Woodsville;

New Jersey: Jerome Yaguda, Wakefern Food Corporations, Elizabeth; Lawrence Inserra, Inserra Supermarkets, Mahwah; Lonny Laurenti, ShopRite of Pennington, Trenton;

New Mexico: Joseph DiGregorio, California Super Market, Gallup;

New York: Nicholas D'Agostino, Jr., D'Agostino Supermarkets, New Rochelle; Bruce Hegedorn, Hegedorn's, Webster; Jerome Pawlak, Bell's Food Center, Albion; Jim Robinson, Olean Wholesale Grocery, Olean;

North Carolina: Chip Lanier, Grandview Food Market, Pfafftown; Landy Laney, Ingles Markets Inc., Ashville; Dolan Hedrick, South Lexington Super Market, Lexington; Chuck Richards, Reid's Better Foods, Charlotte; Winfield Sherin, Sherin Super Market, Littleton; Duff Harris, Harris Super Markets, Greenville; Wayne McKinney, Piggly Wiggly, Goldsboro; Larry Wilson, Wilson's Supermarkets, Wilmington; John King, King's Red & White, Durham; Dewey Hill, Hill's Food Stores, Whiteville;

Ohio: Walter Churchill, Sr., Churchill's Super Markets, Sylvania; Ronald Graff, Columbiana Foods, Boardman; Thomas Conroy, Jr., Conroy's IGA, Youngstown; James Stoll, Bag-n-Save Foods, Dover; Harold Massie, Jr., Massie's Super Market, Portsmouth; Ben McCormick, Leetonia Golden Dawn Supermarket, Leetonia; Lee Schear, Metro Markets, Dayton; Tony Bailey, Sacks Food Avenue, Amelia; Arlie Rodhe, Rodhe's IGA Super Center, Millersburg; Henry Nemenz, H.P. Nemenz Food Stores, Poland;

Oklahoma: R. Scott Petty, Petty's Fine Foods, Tulsa; Bill Johnson, Johnson Foods, Muskogee; Maurice Box, Box Food Stores, Tahlequah; R.C. Pruett, Pruett's Food, Antlers; John Redwine II, John's IGA, Spiro; Harold Hale, Hale's Foods, El Reno; Steve Brown, Save-A-Stop, Oklahoma City; Marty Monjay, Monjay's IGA, Sulphur; Scott Dixon, Bud's Food Stores, Tulsa; Darold Anderson, Affiliated Food Stores, Tulsa; Joan Salisbury, Bud's Grocery & Meats, Vici;

Oregon: Alan Jones, United Grocers, Portland;

Pennsylvania: J. Christopher Michael, Associated Wholesalers, Inc., Robesonia; Marilyn Krim, Genuardi's Supermarkets Inc., Norristown; Ralph Berardi, Bradford Shur Fine, Brady; Paul Hoover, Jr., Kennie's Markets, Gettysburg; Christy Spoa, Sr., Christy's Markets, Ellwood City; Sharon Young, McGinnis Sisters Special Food, Pittsburgh; Carole Bitter, Friedman's, Butler;

South Dakota: Douglas Van Zee, Canton Food Center, Canton;

Tennessee: Kenneth Stepherson, Stepherson's Big Star, Memphis; H. Dean Dickey, Giant Foods, Columbia; Edward McMillan, Food City Supermarkets, Knoxville;

Texas: Newel Level, Level's Food Center, Ft. Worth; Hobert Joe, Continental Finer Foods, Houston; Norman Pentecost, Pen Foods, San Antonio; Benny Cooper, Affiliated Foods, Amarillo, Richard Wong, Food 4 Less, Pasadena; Don Allison, Town & Country Food Stores, San Angelo;

Utah: G. Steven Allen, Allen's Super Save Markets, Orem; Kenneth Macey, Macey's, Salt Lake City;

Vermont: Bill Prunier, Prunier's Market, Bomoseen; Dean Comstock C&C Supermarket, Barton;

Virginia: Gene Bayne, Gene's Super Market, Richmond; Daniel Maenza, Wade's Super Markets, Christianburg;

Washington: Chris Brown, Wray's Thriftway, Yakima; Craig Cole, Brown & Cole, Ferndale; John Herbison, URM Stores, Spokane; Walter Schmidt, Walt's Fine Foods, Lakebay;

West Virginia: David Milne, Morgan's Clover Farm Market, Kingwood; William Witschey, Witschey's Market, New Martinsville;

Wisconsin: Thomas Verhagen, Larry's Markets, Kaukauna; Fred Lange, Lange's Sentry Foods, Madison; Layton Olsen, Olsen's Piggly Wiggly, Cedarburg; William Confer, Roundy's Inc., Milwaukee; Donald Williams, Don's Super Value of Menomonie, Menomonie; Gail Omernick, The Copps Corporation, Stevens Point; Doug Finkelmeyer, Sentry Markets, Waukesha; Roswell Nelson, Nelson's Super Market, Tomahawk;

Wyoming: Richard Roy Williams, Williams Inc., Glenrock; Gary Decker, Decker's Food Center, Gilete;

Virgin Islands: La Verne Esquilin, Tri-Mart, St. Thomas.

The following state associations are instrumental in coordinating information relative to the community service activities of their members:

California Grocers Association; Retail Grocers Association of Florida; Food Industry Executives Association; Illinois Food Retailers; Grocers Association of Iowa; Kentucky Grocers Association; Louisiana Grocers Association; Maine Grocers Association; Massachusetts Food Association; Associated Food Dealers of Michigan; Michigan Grocers Association; Minnesota Grocers Association; Rocky Mountain Food Dealers Association; Montana Food Distributors Association; New Hampshire Retail Grocers Association; New Mexico Grocers Association; Youngstown Area Grocers Association; Ohio Grocers Association; Oklahoma Grocers Association; Pennsylvania Food Merchants Association; Tennessee Grocers Association; Retail Grocers Association of Houston; Utah Retail Grocers Association; Washington State Food Dealers Association; Wisconsin Grocers Association; West Virginia Association of Retail Grocers.

Manufacturers: McCormick & Company, Inc.; Kraft General Foods; E.J. Brach Corporation; Brown & Williamson Tobacco; Gerber Products Company; Van Den Bergh Foods; General Mills; The Pillsbury Company; Thomas J. Lipton, Inc.; Lever Brothers Company; Pepsi-Cola U.S.A.; Procter & Gamble Company; Borden, Inc.; Dow Brands; Southland Corp.; Bluegrass Coca-Cola.

"Grocers Care" awards recognize the involvement of individual food retailers and wholesalers in community programs. A sampling of exemplary contributions includes:

*A Healthy America—*

Participation in a single day sales support of "Grocers Fight Cancer," American Heart Association, American Diabetes Alert, Red Cross and other national charitable organizations where a percentage of sales are donated;

Programs to shelter and feed the homeless and hungry;

Fitness programs and support in planning activities as well as supply healthy food;

Senior citizen assistance.

*A Proud America—*

Support of our Armed Forces in the recent Gulf War;

Voter registration campaigns;

Sports tournaments in support of charitable organizations as well as local hospitals, fire, and police departments;

Boy and Girl Scouts, Little and Lassie Leagues, and other sports program sponsorships.

*A Clean America—*

Environmental commitments from the manufacturing and packaging process to recycling at the store level to instituting local recycling centers;

Reading programs to fight illiteracy, local educational commitments through scholarships, percentage of sales contributions, and computers for student programs; and

Contributions of time, funds, and buildings in support of the arts.

Mr. President, these examples demonstrate the significant contributions that retail and wholesale grocers make to their communities. I congratulate the members of the National Grocers Association and commend them for their efforts.•

## ISSUES FOR THE MOSCOW HUMAN RIGHTS MEETING: ROMANIA

Mr. DECONCINI. Mr. President, the Conference on Security and Cooperation in Europe [CSCE] meeting of the Conference on the Human Dimension is scheduled to take place in Moscow from September 10 to October 4, 1991. This meeting, the third in the human dimension series, will be a milestone in the CSCE process. Its very location symbolizes how far we have come in bridging the gap between East and West—yet it also serves to remind us that progress remains to be made in order to fulfill the human rights commitments enshrined in CSCE documents.

One crucial component of this meeting will therefore be the review of implementation. A careful and balanced appraisal of the human rights situation in member states, made in the spirit of cooperation and constructive concern, will help highlight the successes, and dramatize the shortcomings, of the CSCE process thus far.

Romania, for example, has made significant improvement in many areas, such as freedom of movement, freedom of expression, and freedom of religion. There has been an explosion of independent newspapers and journals, and authors may freely write on a wide range of issues. Measures have been taken to improve the status of national minorities in the areas of education, culture, and religious freedoms, and the various national minorities are guaranteed representation in Parliament. These and other changes are most welcome.

Nonetheless, a number of matters continue to give us concern. The Helsinki Commission, which I co-chair, still receives reports of intimidation and harassment—anonymous letters, phone calls, threats—against personalities and groups that criticize the Government. It is unclear who is responsible for this harassment, but the Romanian authorities seem unable or unwilling to identify and prosecute the perpetrators. In addition, journalists have been assaulted on several occasions this year—not only by anonymous thugs, but also by the Romanian police. The Ministry of the Interior claims it has taken punitive actions against the policemen who assaulted a number of journalists in April, yet its refusal to identify the perpetrators—even to the victims—has bred skepticism and mistrust.

Press freedom has been one of the most important developments since the fall of Ceausescu. Yet there has been a dark side to the liberation of the press as well. Despite the fact that only some 18,000 Jews remain in Romania, a country of 23 million, a virulent strain of anti-Semitism has emerged since the revolution of December 1989. Ultranationalist newspapers such as Romania Mare, edited by two of Ceausescu's former propagandists, regularly print anti-Semitic and inflammatory articles. Romania Mare has the largest circulation of any weekly paper in Romania. On June 4, the Government of Romania issued an official declaration condemning and distancing itself from anti-Semitic and racist press articles. This is a welcome step forward.

In addition to resurgent anti-Semitism, the situation of Romania's 2 million strong Hungarian minority remains a source of tension. Controversies surrounding the right to mother-tongue education have led to angry

confrontations, most notably the brutal interethnic clashes in Tirgu Mures last March. Several draft pieces of important legislation, including the law on national security, the audio-visual law, and the Constitution, have included provisions perceived to endanger minority rights—provisions the Hungarian Democratic Alliance and others have struggled to block or amend. Hungarians are markedly under-represented in local administrations, but local elections, now scheduled for October, may redress this situation.

We should urge Romanian officials at all levels to speak out boldly and consistently against anti-Semitism and other forms of ethnic intolerance, and to do all they can to promote mutual respect and understanding among Romania's citizens. This appeal is especially urgent in a period of transition and economic hardship, when popular fears and uncertainties may find an outlet in prejudice or even violence. This seems to be the case with regard to the recent spate of attacks against Roma (Gypsy) individuals and their property—attacks which have sometimes enjoyed tacit sympathy from local authorities. Popular notions of justice must not be allowed to undermine basic standards of law enforcement and human rights.

Mr. President, I raise these concerns today in anticipation of the CSCE Moscow meeting, both to emphasize the need for a serious review of implementation and to urge the United States to participate fully in that endeavor. Having come so far in the area of human rights, we owe it to the people of Europe to persevere in our efforts. We should be prepared to discuss the situation in Romania, and in other members states, with candor and concern.●

## ISRAEL HAS EARNED AMERICA'S ASSISTANCE

● Mr. D'AMATO. Mr. President, I rise today to address the question of absorption loan guarantees for the State of Israel, an issue which the Senate will consider this September.

I believe that our Government should immediately declare its support for the $10 billion in guarantees which are to be considered, this despite the commitment by the Israeli Government not to make this request until September. I also call upon my Senate colleagues to likewise declare their support for several reasons:

I was in Israel when she made unprecedented sacrifices for a friend—America. Israel subjected herself to bombardments by Iraqi Scud missiles which caused massive destruction, loss of life, and permanent psychological damage. What nation has ever deferred its natural instinct and ability for superior defense? I was in the gas shelters with men, women, and children and have no doubt of the lingering damage that will always remain with them.

Israel is shortly expected to take a monumental risk by participating in peace talks with governments who cannot guarantee that their successors will abide by agreements because they are dictatorships. These are governments which have maintained a pathological boycott against the Jewish state. Other participants include the United Nations, which still holds that zionism is racism, and the Soviet Union, which has yet to extend diplomatic recognition to Israel.

Mr. President, Israel is our only true friend in the Middle East because it is an enduring democracy. Israel should not have the overriding concern for absorption loan guarantees as she enters into peace negotiations which may determine her very survival.

The provision of these guarantees would be a humanitarian gesture. Israel's population will increase 20 percent in the next 5 years as a result of refugee absorption. These guarantees will help Israel to absorb the most educated wave of immigrants in her history—40 percent have college degrees, and will expand the economy and generate revenues.

Additionally, Israel has never defaulted on a loan. I wish to point out that these are loan guarantees, not loans or grants, and involve no transfer of funds from the Treasury of the United States.

Mr. President, our great Nation was critical in securing the freedom of Soviet Jewry. Our support for absorption loan guarantees is the next logical and humanitarian step.●

## NATIONAL ENERGY POLICY

Mr. WELLSTONE. Mr. President, I rise to call the attention of the Senate to an important article in the July 12 issue of the respected journal, Science. Entitled "Resource Constraints in Petroleum Production Potential" and written by three researchers on the staff of the U.S. Geological Survey's World Energy Resource Program, it offers an alarming vision of the future of the world's oil supplies. It describes a serious problem any real national energy strategy must address.

In this paper, the authors provide a detailed analysis of the present and potential sources of oil in the world. Their principal conclusion is that within two decades the Middle East will come to be the world's dominant source of petroleum. The United States and the Soviet Union are already declining in annual production. And this careful, comprehensive study of oil-producing geological formations worldwide concludes that it is extremely unlikely that there will be major new oil field finds anywhere of sufficient magnitude to offset the dominance of Middle East oil and the consequent vulnerability of the United States and many other industrialized nations.

What is more, while global oil production will continue to increase through the first two decades of the 21st century, the authors conclude: "beyond that time we must expect that the world fuel supply will change fundamentally, because oil will account for a declining fraction of energy consumption."

This study is a clear signal that danger lies ahead unless we get serious now about dealing with our national addiction to petroleum.

Mr. President, I ask that this important analysis be included in the RECORD, so my colleagues and the American people will have an opportunity to study it. When we come to debate soon what should be the ingredients of a national energy strategy, we must take into account the insights of this study into the dangerous energy future we face unless we make a serious national commitment now.

We must get serious about reducing petroleum consumption where we use it the most—in transportation, primarily on our highways in our cars and trucks.

We must demand increased energy efficiency in our vehicles. Our national security depends on it.

We must demand a serious commitment to alternative transportation fuels, like ethanol and natural gas and hydrogen and electricity from renewable sources. The economic vitality of our nation depends on it.

We have only 20 years. We must begin now to cure our national petroleum addiction by mapping out how we as a Nation will move seriously to highly efficient cars and trucks and alternative transportation fuels in those 20 years.

That is a central element of what a national energy strategy should be about—a serious commitment to planning a twenty-year transition to a transportation future built around cars and trucks that are at least twice as efficient as those on the road today and renewable, domestically produced alternative fuels.

I do not see such a serious, long-term, transition perspective in either the Bush administration's proposal or in the Senate Energy Committee's bill. The Department of Energy's own analysis of these proposals concludes that following the path proposed in S. 1220 our Nation's dependence upon unstable foreign sources of oil will continue to grow. Under the administration's plans, in the coming decades OPEC nations will supply not just half of our oil needs, as they do today, but two-thirds or more.

This precarious situation will not come about due to our inability to be more efficient or produce renewable fuels. If it comes about, it will be due to our failure to pursue an effective en-

ergy policy. S. 1220 is not an effective energy policy response to this crisis. An analysis prepared by the American Council for an Energy Efficient Economy concludes that the programs proposed in all of the 16 titles of S. 1220 will produce only 3 percent of the oil savings that could result if the energy bill included specific, strong vehicle efficiency standards.

Mr. President, I also request that this analysis be included in the RECORD, so my colleagues will have an opportunity to study it. When we come to debate our national energy strategy, it will help separate rhetoric from reality.

I would also call to the attention of my colleagues a letter which I have received from Dr. Jay D. Hair, president of the National Wildlife Federation, regarding S. 1220. On behalf of the 5.5 million members of NWF, Dr. Hair states "S. 1220 does not provide our county with the energy policy Americans expect, need, or deserve." Enclosed with his letter was a synopsis of this legislation which explains in some detail why some 19 national organizations have now joined in opposing it.

Mr. President, I ask that this letter and the synopsis of S. 1220 be included in the RECORD following these remarks.

In conclusion, I wish to state emphatically that S. 1220, the National Energy Security Act of 1991, is not a national energy strategy that responds to the energy problems we face. As my colleague from New Jersey, Senator BRADLEY, so aptly put it in his minority views on this bill, "Some of my colleagues will hail this bill as a solution. In my view it's far from that. Rather, it reads like an industry wish list that in numerous cases is contrary to the public interest."

The material follows:

## RESOURCE CONSTRAINTS IN PETROLEUM PRODUCTION POTENTIAL

(By C.D. Masters, D.H. Root, and E.D. Attanasi)

NOTE.—Geologic reasons indicate that the dominant position of the Middle East as a source of conventional petroleum will not be changed by new discoveries elsewhere. The share of world crude oil production coming from the Middle East could increase, within 10 to 20 years, to exceed 50 percent, under even modest increases in world consumption. Nonconventional resources of oil exist in large quantities, but because of their low production rates they can at best only mitigate extant trends. Increased production of natural gas outside the United States, however, offers an opportunity for geographically diversified energy supplies in the near future.)

The discovery and production of mineral and energy resources have always been shrouded in the mystery of the physically unknown and the economically uncertain. The scientist struggles to understand the physical nature of the commodity to better predict its occurrence and volume; at the same time, the economist tries to understand the economic parameters of the commodity in order to predict its role in the market. Commonly, resources originally in large supply have been on the verge of running out just as some new large source has been miraculously discovered or some new process has permitted us to economically extract the resource from a heretofore low-quality source.

In spite of an imperfect knowledge of nature and the limits of technology, we have to make judgments on the basis of current understanding to plan adequately for the future. In this regard, oil and gas are particularly critical commodities because they provide the greatest share of the energy on which our world economy depends. Not all hydrocarbon occurrences are effective sources of fuel for modern industrial societies, in which large volumes of products are essential. Only when oil and gas resources can be produced at a high flow rate are they important to the fuel market.

The world is not, at present, short of oil and gas (as evidenced by quick adjustments in the period from August 1990 to January 1991 associated with the loss of Iraq's and Kuwait's crude oil contributions). Large quantities of oil, amounting to some 50 years at the present rate of consumption, and an even greater volume of gas have already been discovered (Tables 1 and 2). Indeed, we can expect that conventional oil and gas production will continue to increase through the first couple of decades of the 21st century.[1] But beyond that time, we must expect that the world fuel supply will change fundamentally, because oil will account for a declining fraction of energy consumption. Furthermore, the next several decades will not likely experience just a gradual exhaustion of oil as the primary energy resource. Rather, the supply of oil likely will be periodically disrupted owing to its increasingly narrow geographic distribution into the single dominant area of occurrence—the Middle East[2]. Stability in the Middle East, as defined by a consistent flow of oil at stable prices, is critical to the modern economic activities in the world. As other parts of the world progressively decline in their capability to produce oil, the Middle East will become increasingly important until substitute sources of fuel energy, with their attendant infrastructures, are developed.

Belief in the above prediction of petroleum availability requires confidence in the professional assessment and analysis of petroleum resources. Petroleum data are incomplete and uncertain, and analogy must take the place of on-the-ground inspection in many remote and deeply buried goelogic regions. Conclusions from such professional inquiries have varied substantially over the years. These variations have, in part, stemmed from differences in definitions of the resource, which, for some, also included the unconventional resources of extra-heavy oil, tar sands, tight gas sands, clathrates, and other marginal to noneconomic resource occurrences. Although these unconventional materials may someday supplement conventional fuel resources, the rates of production of unconditional resources alone will likely be too low to satisfy the demands of fuel markets, however valuable they may remain to the petrochemical industry.

Because of the increasing acceptance of hypotheses of the origin of petroleum and our exploration of the entire globe, differences among estimates of petroleum availability are narrowing; the core understanding of resource occurrence has not changed in several decades.[2] We cannot know where each new discovery will be made, but now we can be substantially confident that new, large occurrences of oil, such as would be necessary to alter the proportional contribution of the Middle East to world petroleum, are not likely to be found; certainly, no such occurrences have been found in the several recent decades of intense worldwide petroleum exploration.[3]

Although we can see that the remaining crude oil supply is becoming concentrated in a few areas, there are, nonetheless, alternatives on the horizon. As in all energy use, however, change requires infrastructure development, which takes time, costs money, and bears substantial risk because of competing low-cost fuels. The immediate alternative, and it still involves petroleum, appears to be to make full use of the natural gas component of petroleum. The present world geographic distribution of major gas reserves is not conducive to local use in large quantities, but, if gas reserves were converted to liquefied natural gas or to middle distillates, they could be transported readily to market. Extra-heavy oils of Venezuela and tar sands of Canada, so-called unconventional resources, in combination with conventional petroleum, could also make a short-term difference as a Western Hemisphere counterbalance to Middle Eastern supply dominance.

### WORLD PETROLEUM RESOURCES

*Ultimate resources.* Hypotheses of broad characterizations of world paleoclimate, geography, and geology permit us, inductively, to infer the regional petroleum properties useful in making quantitative petroleum resource assessments. These inferences from the hypotheses can then be tested areally and stratigraphically for local concurrence by exploration activities.

The presence of economically recoverable petroleum is essentially a function of five independent variables combining in a satisfactory manner: source rock, reservoir rock, trap, seal, and timing. The occurrence of large resources requires nearly optimum conditions for each of the five variables and is, therefore, a statistically rare event. Owing to the studies over the past 10 years in the World Energy Resources Program of the U.S. Geological Survey and, in particular, to the work of Ulmishek and Klemme (4), we can now recognize four areas of the world, or realms, wherein certain germane physical and biological conditions during geologic times have occurred that were either favorable or unfavorable to the occurrence of petroleum throughout the realm. These areas are the Tethyan realm, the Boreal realm, the South Gondwana realm, and the Pacific realm.

About two-thirds of the world's petroleum is associated with the Tethyan realm, which is named for Tethys, an approximately equatorial seaway that, from time to time, separated Laurasia (the northern paleocontinent) from Gondwanaland (the southern paleocontinent) (5). This warm water marine seaway, lying approximately between the 30° latitudes, north and south, was ideal for source rock deposition and permitted the development of carbonate bank petroleum reservoirs that do not form extensively in colder waters at higher latitudes. Salt is also deposited in warm, shallow water, and it provided excellent seals to prevent leakage from the trap and in some areas produced structures to entrap oil by flowing and mounding. Trap formation was further enhanced by the continental collisions associated with the frequent plate tectonic openings and closing of the Tethyan seaway over geologic time. The maintenance over much of geologic time

Footnotes at end of article.

of the ideal conditions for the origin and entrapment of petroleum ensured that trap formation and reservoir development would generally be coincident with oil formation and migration.

The Boreal realm, to the north of Tethys, contains about one-quarter of the world's petroleum, whereas its counterpart south of Tethys, the South Gondwana realm, contains only about one-twentieth of the world's petroleum. The relatively good petroleum potential of the Boreal realm developed because, during Paleozoic time, the continents now composing the Boreal realm were for the most part located south of 30° N (in the vicinity of Tethys). This location permitted the development of good source rock, carbonate bank reservoirs, and evaporite salt seals. Only in Mesozoic and Cenozoic times was the continental block dominantly in the northern high latitudes; at those times, conditions favored natural gas accumulation. Gondwanaland, on the other hand, the mirror image of continents in the Northern Hemisphere, was clustered around the South Pole during early and middle Phanerozoic time (about 500 million to 200 million years ago); only the northern boundaries of the South American and African blocks of Gondwanaland extended into the Tethys region. Thus, the extraordinary petroleum provinces of Venezuela, Algeria, Libya, and the Arabian-Iranian Gulf lie in the Tethyan realm.

The remainder of Gondwanaland constitutes the South Gondwana realm and is general characterized by the absence of good source rocks, carbonate bank deposits, and evaporitic salt seals. After the breakup of Gondwanaland, which occurred in Late Jurassic and Early Cretaceous time (some 150 million year ago), the various continental blocks migrated sufficiently north to permit favorable petroleum geology conditions, as evidenced today by petroleum reservoirs, mostly in coastal areas, found in esatern South America, West Africa, India, and southeasternmost Australia. Even in these later times, however, continental blocks in the South Gondwana realm were mostly above sea level, and had only limited access to the marine depositional conditions that might have provided high petroleum potential.

The Pacific realm contains only about one-twentieth of the world's petroleum. Subduction and the dragging down of the continental margin have served to metamorphose all but the most recent sedimentary rocks and have left only Neogene rocks with petroleum potential. But even the Neogene rocks are affected secondarily by the results of subduction, because they commonly are inundated with volcanic debris that destroys reservoir properties and hence the potential for large petroleum accumulation.

Within the Pacific realm, as in all other realms, the few windows of anomalous petroleum abundance have been successfully exploited. Nonetheless, there now is sufficient understanding of regional geologic history and processes to be able to postulate with confidence the expected geologic conditions with each realm and to infer their particular petroleum geology properties. From that understanding, and using analogs developed for the most part within each realm, we have assessed undiscovered petroleum potential by basin and country (Table 1 and 2)[6]. Even though oil and gas are distinctly different commodities that can be generated in widely differing ways, their origins have many similarities and in large measure they occur together. This is so because the giant occurrences of natural gas dominate the total resource volumes, and these tend to be located where the giant resources of oil also have been discovered. An exception to this generalization appears to be the Barents and Kara seas, where large dry gas resources recently have been discovered without significant companion oil deposits. Generally, good sealing rocks, such as salt, are required to secure the trapping of gas, but these rocks are geologically excluded in high latitudes; the large gas resources of the West Siberian basin are sealed by permafrost. The large gas occurrences in the Kara and Barents sea areas, however, deprived of both salt and permafrost, are sealed with a fine-grained shale having low permeability.

*Field growth and the identified reserve.* The petroleum resources, from which one can estimate future daily production, include undiscovered and discovered resources (Table 1 and 2). The quantity of undiscovered oil and gas resources is uncertain and is expressed in Table 1 by the reporting of a probability range of values. The quantity of reserves in known fields is uncertain as well. In the United States and Canada the amount of producible oil and gas from discovered fields has been consistently underestimated ([7]). As the fields are developed and produced, their estimated size usually increases. This increase in the estimates of ultimate field recovery is called field growth.

Two reasons that field estimates are conservative are (i) the economic penalties for underestimation are much less severe than those for overestimation and (ii) reservoirs can be discovered or extended in known fields or both. In the United States, the estimate of the remaining growth of oil recovery in discovered fields beyond proved reserves is comparable in magnitude to proved reserves.

The growth in a field's estimated size continues for decades after the field's discovery. For example, estimated recover for per-1920 U.S. fields grew about 400 mmbbl (million barrels, 1 mmbbl=1.59×10$^5$ m$^3$) per year from 1977 to 1988 and accounted for about 15% of the total additions to U.S. reserves ([8]). In the United States during the period from 1978 through 1988, approximately 83% on average of the additions to proved reserves came from growth of fields that were more than 6 years old ([8]). Estimates of reserves in fields outside the United States and Canada are not as well documented but appear to show similar trends with regard to growth of discovered fields. Specifically, annual additions to world reserves appear to be much larger than can be accounted for by new field discoveries ([3]).

Our estimates (Table 1 and 2) of reserves for the United States include 22 bbo (billion barrels of oil, 1 bbo=1.59×10$^8$ m$^3$) of expected field growth. The corresponding figure for gas is 100 tcf (trillion cubic feet, 1 tcf=2.8×10$^{10}$ m$^3$). We believe that the oil reserves in the Soviet Union (Table 1) also include a significant component beyond the strict definition of proved reserves. For most of the other non-OPEC (Organization of Petroleum Exporting Countries) members, our estimates do not include the expected growth of discovered fields; most of the reserve estimates for oil and gas came from *World Oil* ([9]). The understatement of gas reserves (Table 2) is likely even greater than that for oil because gas is far less developed than oil as an energy source in most areas of the world.

TABLE 1. CRUDE OIL PRODUCTION, RESERVES, AND UNDISCOVERED RESOURCES

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|---|---|---|---|---|---|---|---|---|---|
| North America | 182.8 | 4.4 | 83.0 | 19 | 67 | 121 | 197 | 204 | 387 |
| Canada | 14.3 | 0.5 | 7.0 | 14 | 9 | 33 | 57 | 40 | 55 |
| Mexico | 15.7 | 0.9 | 27.4 | 29 | 15 | 37 | 75 | 64 | 80 |
| United States | 152.7 | 3.0 | 48.5 | 16 | 33 | 49 | 70 | 98 | 251 |
| Other | 0.1 | 0.0 | 0.1 | 20 | 1 | 1 | 3 | 2 | 2 |
| South America | 57.9 | 1.4 | 43.8 | 30 | 18 | 44 | 86 | 88 | 146 |
| Argentina | 4.9 | 0.2 | 2.3 | 14 | 1 | 2 | 5 | 5 | 10 |
| Brazil | 2.5 | 0.2 | 2.8 | 13 | 3 | 9 | 18 | 11 | 14 |
| Venezuela-Trinidad [1] | 43.9 | 0.8 | 34.4 | 46 | 8 | 20 | 36 | 54 | 98 |
| Other | 6.7 | 0.3 | 4.3 | 13 | 5 | 14 | 30 | 18 | 25 |
| Western Europe | 15.7 | 1.4 | 26.9 | 19 | 11 | 28 | 56 | 55 | 70 |
| Netherlands | 0.5 | 0.0 | 0.2 | 6 | ..... | ..... | ..... | ..... | ..... |
| Norway | 3.1 | 0.4 | 11.0 | 26 | 5 | 13 | 25 | 24 | 27 |
| United Kingdom | 8.6 | 0.8 | 13.5 | 16 | 4 | 11 | 23 | 25 | 33 |
| Other | 3.5 | 0.2 | 2.2 | 14 | 1 | 4 | 10 | 6 | 10 |
| Eastern Europe | 6.8 | 0.1 | 2.0 | 15 | 1 | 2 | 4 | 4 | 11 |
| Soviet Union | 103.6 | 4.5 | 80.0 | 18 | 46 | 101 | 187 | 181 | 285 |
| Africa | 46.4 | 2.0 | 58.7 | 29 | 20 | 48 | 92 | 106 | 153 |
| Algeria [1] | 9.1 | 0.4 | 8.4 | 22 | 1 | 2 | 5 | 11 | 20 |
| Angola | 1.3 | 0.2 | 2.0 | 12 | 1 | 2 | 4 | 4 | 5 |
| Egypt | 4.4 | 0.3 | 4.6 | 15 | 1 | 5 | 12 | 9 | 14 |
| Libya [1] | 15.9 | 0.4 | 22.4 | 59 | 4 | 8 | 15 | 30 | 46 |
| Nigeria [1] | 12.4 | 0.6 | 16.0 | 29 | 4 | 9 | 18 | 25 | 38 |
| Other | 3.2 | 0.2 | 5.3 | 24 | 9 | 21 | 41 | 27 | 30 |
| Middle East | 160.2 | 5.1 | 584.8 | 114 | 66 | 122 | 199 | 706 | 867 |
| Iran [1] | 36.1 | 0.6 | 63.0 | 105 | 11 | 22 | 35 | 85 | 121 |
| Iraq [1] | 19.9 | 1.0 | 99.0 | 99 | 15 | 45 | 80 | 144 | 164 |
| Kuwait [1] | 23.3 | 0.5 | 96.0 | 204 | 1 | 3 | 7 | 99 | 123 |
| Saudi Arabia [1] | 55.8 | 1.8 | 255.0 | 142 | 20 | 41 | 65 | 296 | 351 |
| United Arab Emirates [1] | 11.0 | 0.6 | 56.2 | 98 | 3 | 7 | 13 | 63 | 74 |
| Other | 14.2 | 0.7 | 15.6 | 23 | 2 | 4 | 8 | 20 | 34 |
| Asia-Oceania | 36.8 | 2.2 | 42.8 | 19 | 37 | 81 | 148 | 124 | 160 |
| Australia-New Zealand | 3.0 | 0.2 | 2.4 | 12 | 2 | 5 | 11 | 8 | 11 |
| China | 13.0 | 1.0 | 22.0 | 22 | 20 | 48 | 93 | 70 | 83 |

TABLE 1. CRUDE OIL PRODUCTION, RESERVES, AND UNDISCOVERED RESOURCES—Continued

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|---|---|---|---|---|---|---|---|---|---|
| India | 2.6 | 0.2 | 4.5 | 19 | 1 | 3 | 7 | 8 | 11 |
| Indonesia [1] | 13.3 | 0.5 | 8.4 | 17 | 5 | 10 | 18 | 18 | 32 |
| Malaysia-Brunei | 3.9 | 0.2 | 4.6 | 19 | 3 | 6 | 10 | 10 | 14 |
| Other | 0.9 | 0.0 | 1.0 | 22 | 4 | 8 | 15 | 9 | 10 |
| World | 610.1 | 21.3 | 922.1 | 43 | 275 | 547 | 945 | 1,469 | 2,079 |

[1] OPEC member (note Trinadad is not in OPEC).

Explanation of numbered columns in Table 1. Crude oil production, reserves, and undiscovered resources (3, 9, 18–20). Data are reported in bbo (bbo=0.159x10$^9$ m$^3$). Data smaller than 0.05 bbo are reported as 0.0. The column numbers identify the following : (1) cumulative production through 1988; (2) 1988 production; (3) identified reserves; (4) reserves/production (5) lower bound of a 90% confidence interval for undiscovered resources; (6) mean undiscovered resources; (7) upper bound of 90% confidence interval for undiscovered resources; (8) futures [(3)+(6)]; (9) ultimate resources [(1)+(3)+(6)].

TABLE 2. NATURAL GAS AND NATURAL GAS LIQUIDS (NGL) PRODUCTION RESERVES

| | Natural gas | | | | | | | | | NGL | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (3) | (6) |
| North America | 826.5 | 21.2 | 440.2 | 21 | 581 | 926 | 1,378 | 1,366 | 2,193 | 11.5 | 19.4 |
| Canada | 73.1 | 3.2 | 94.8 | 30 | 153 | 367 | 646 | 462 | 535 | 2.4 | 8.4 |
| Mexico | 21.9 | 1.1 | 73.4 | 66 | 70 | 157 | 291 | 231 | 252 | 1.1 | 2.4 |
| United States | 731.5 | 16.9 | 272.0 | 16 | 307 | 399 | 507 | 671 | 1,403 | 8.2 | 8.6 |
| Other | | | 0.0 | | 1 | 3 | 6 | 3 | 3 | 0.0 | 0.0 |
| South America | 36.4 | 2.3 | 168.9 | 73 | 95 | 210 | 387 | 379 | 415 | 2.5 | 3.1 |
| Argentina | 9.3 | 0.8 | 27.3 | 36 | 10 | 37 | 75 | 64 | 74 | 0.4 | 0.6 |
| Brazil | 1.8 | 0.2 | 3.8 | 19 | 10 | 53 | 100 | 57 | 59 | 0.1 | 0.8 |
| Venezuela-Trinidad [1] | 17.2 | 0.9 | 118.8 | 134 | 20 | 65 | 140 | 184 | 201 | 1.8 | 1.0 |
| Other | 8.1 | 0.4 | 18.9 | 43 | 26 | 55 | 99 | 74 | 82 | 0.3 | 0.8 |
| Western Europe | 120.3 | 6.0 | 219.4 | 37 | 121 | 206 | 320 | 425 | 545 | 3.3 | 3.1 |
| Netherlands | 52.0 | 1.9 | 61.1 | 32 | 5 | 10 | 20 | 71 | 123 | 0.9 | 0.1 |
| Norway | 9.3 | 1.1 | 93.1 | 88 | 55 | 157 | 240 | 251 | 260 | 1.4 | 2.4 |
| United Kingdom | 23.3 | 1.6 | 42.2 | 27 | 8 | 20 | 46 | 62 | 86 | 0.6 | 0.3 |
| Other | 35.7 | 1.4 | 23.0 | 16 | 11 | 18 | 27 | 41 | 77 | 0.3 | 0.3 |
| Eastern Europe | 46.8 | 0.0 | 22.1 | | | | | 22 | 69 | 0.3 | |
| Soviet Union | 332.2 | 27.5 | 1,450.0 | 53 | 739 | 1,582 | 2,861 | 3,032 | 3,364 | 21.8 | 23.7 |
| Africa | 29.9 | 2.1 | 206.2 | 98 | 216 | 444 | 784 | 650 | 680 | 3.1 | 6.7 |
| Algeria [1] | 15.0 | 1.6 | 104.2 | 67 | 6 | 26 | 53 | 131 | 145 | 1.6 | 0.4 |
| Angola | | | 1.7 | | 2 | 6 | 11 | 7 | 7 | 0.0 | 0.1 |
| Egypt | 1.4 | | 9.4 | | 8 | 30 | 60 | 40 | 41 | 0.1 | 0.5 |
| Libya [1] | 5.4 | 0.2 | 25.6 | 127 | 7 | 27 | 55 | 52 | 58 | 0.4 | 0.4 |
| Nigeria [1] | 5.9 | 0.1 | 47.3 | 479 | 80 | 182 | 340 | 229 | 235 | 0.7 | 2.7 |
| Other | 2.3 | 0.3 | 18.0 | 72 | 84 | 173 | 306 | 191 | 193 | 0.3 | 2.6 |
| Middle East | 54.6 | 2.6 | 1,247.2 | 481 | 623 | 1,125 | 1,826 | 2,372 | 2,427 | 18.7 | 16.9 |
| Iran [1] | 17.1 | 0.6 | 595.0 | 947 | 300 | 567 | 1,000 | 1,162 | 1,179 | 8.9 | 8.5 |
| Iraq [1] | 3.2 | | 34.8 | | 60 | 120 | 200 | 155 | 158 | 0.5 | 1.8 |
| Kuwait [1] | 5.3 | 0.2 | 37.8 | 210 | 3 | 6 | 10 | 44 | 49 | 0.6 | 0.1 |
| Saudi Arabia [1] | 13.1 | 0.9 | 181.3 | 200 | 200 | 360 | 600 | 541 | 554 | 2.7 | 5.4 |
| United Arab Emirates [1] | 7.1 | 0.3 | 187.1 | 609 | 30 | 60 | 100 | 247 | 254 | 2.8 | 0.9 |
| Other | 8.8 | 0.6 | 211.2 | 369 | 6 | 13 | 22 | 224 | 233 | 3.2 | 0.2 |
| Asia-Oceania | 76.8 | 4.8 | 288.3 | 60 | 365 | 723 | 1,248 | 1,011 | 1,088 | 4.3 | 10.8 |
| Australia-New Zealand | 7.0 | 0.7 | 40.8 | 57 | 35 | 102 | 219 | 143 | 150 | 0.6 | 1.5 |
| China | 17.1 | 0.5 | 30.0 | 60 | 122 | 260 | 467 | 290 | 307 | 0.5 | 3.9 |
| India | 1.6 | | 21.0 | | 9 | 28 | 62 | 49 | 50 | 0.3 | 0.4 |
| Indonesia [1] | 13.0 | 1.2 | 85.6 | 69 | 47 | 95 | 167 | 181 | 194 | 1.3 | 1.4 |
| Malaysia-Brunei | 4.7 | | 65.0 | | 30 | 74 | 150 | 139 | 143 | 1.0 | 1.1 |
| Other | 33.5 | 2.3 | 45.9 | 20 | 86 | 164 | 276 | 210 | 243 | 0.7 | 2.5 |
| World | 1,523.6 | 66.5 | 4,042.2 | 61 | 2,897 | 5,216 | 8,448 | 9,258 | 10,782 | 65.6 | 83.8 |

[1] OPEC member (note Trinidad is not in OPEC).

Explanation of numbered columns in Table. 2. Natural gas and natural gas liquids (NGL) production, reserves, and undiscovered resources (3, 18, 21, 22). Liquid data reported as billion barrel (0.159x10$^9$ m$^3$), gas reported as tcf (28.9x10$^9$ m$^3$). The column numbers are the same as those in Table 1.

ANALYSIS OF RESOURCE QUANTITY AND GEOGRAPHIC LOCATION

Maturity of nonrenewable resources. Economists are wont to argue that nonrenewable resources are inexhaustible because decreases in supply will cause price increases that adjust demand and promote marginal production and substitutions. We do not contest the theoretical tenets of that position; all those reactions will surely occur. They might not, however, prevent declining production of crude oil and a loss of significant parts of the fuel market.

By concluding that the petroleum industry is mature we mean that it is unable to maintain production of conventional oil within the limits of historical prices. A number of factors affect production, principally the drilling rate and the size and geologic quality of the geographic area where petroleum can be produced economically. When prices, over the range of historical experience, limit entry of the industry into frontier or high-cost areas or prevent sufficient drilling to maintain production, the industry is mature.

By this definition, the U.S. petroleum industry in the lower 48 states is mature. Production is declining under current economic conditions, and during the recent times of much higher prices the United States was not able to increase production, even including Alaskan production, to the peak level of 1970. In areas having roughly uniform drilling costs (per well), a maturation pattern similar to that of the onshore lower 48 states can be expected: initial discoveries result in a buildup of reserves and increasing production and are followed by declining discovery rates (1945 to 1955), stable reserves (1960s), and declining production (1970 to date). The time periods delineating any of these stages can be shortened or lengthened by fluctuating prices or other economic instabilities. This maturation pattern of the U.S. oil industry has also been followed by the gas industry, but it has lagged by several years.

Recent world production history. By 1988 OPEC, the United States and the Soviet Union jointly, and the other non-OPEC producers each accounted for about one-third of world oil production (Fig. 2). In 1973 OPEC had accounted for 55% of world production, representing their historical maximum, which they were able approximately to maintain until 1979. After 1979, however, there was a sharp decline in OPEC production because of reductions in world demand for oil associated with the 1979 major price increases. The price increases permitted continued development of high-cost areas such as the North Sea and the U.S. North Slope and encouraged marginal developments, all of which eventually limited the OPEC market share. This price response produced an expectation that price increases would bring on major new oil discoveries as needed. Studies by workers in the World Energy Resources Program of the U.S. Geological Survey, however, suggest that no new major basins (that is, with 20 billion barrels of recoverable crude oil) are likely to be discovered.[3]

During the period of 1960 to 1988, the combined production of the United States and Soviet Union grew at a rate of 2.6% per year irrespective of major price fluctuations. We know from the component parts that the flattening of the joint U.S. and U.S.S.R. production curve would have been a production decline if the price escalation during this period had not supported the North Slope development. U.S.S.R. production increased steadily to 1979, but since 1980 it has been relatively flat. The growth in production of other non-OPEC producers from 1960 to 1988 increased at an annual rate of 7.6%, which reflected the development of new provinces in the North Sea and Mexico and increases in production in China, Egypt, Oman, Brazil, Malaysia, and dozens of smaller producers. The rate of production increase was established before the price increases, but the price increases permitted development in the North Sea and other high-cost areas to contribute to the maintenance of that rate of increase of production in the other non-OPEC countries.

Because of U.S. and U.S.S.R. production declines resulting from industry maturity, it seems clear that non-OPEC production will become inadequate and that OPEC's dominance in world production will return. The geographic concentration of OPEC futures (identified reserves plus mean undiscovered resources) (Table 1) suggests that future

OPEC production will increasingly be concentrated in the Middle East. In order to predict the time period when OPEC can be expected to regain dominance in world crude oil production, one must develop scenarios of the production capabilities of non-OPEC countries.

Scenarios of non-OPEC crude oil production capabilities. Currently, two-thirds of world oil production is from non-OPEC countries, but these countries account for only 25% of the world's identified reserves. The geographic distribution of world oil production has been changing and will continue to shift toward the Middle East. The conventional resources shown in Table 1 permit inferences about future production capabilities. This analysis leads to the conclusion that under generally stable economic and political conditions, the market share of non-OPEC producers could decline to below 50% of world oil production during the next 20 years.

The elements of the analysis of future production potential are (i) the annual additions to reserves from new discoveries and from growth of discovered fields and (ii) the fraction of proved reserves produced annually. Calculations were done for individual countries and summed. In calculating the production capabilities we assumed that political and economic factors will permit the non-OPEC countries to develop their conventional resources at rates similar to those of the early 1980s.

Projected additions to reserves from new discoveries were based on extrapolations of each country's past discovery rate. The projections were constrained so that by 2010 at least half of the mean undiscovered oil shown in Table 1 would be in discovered fields, although not necessarily yet credited through growth to proved reserves. Projected additions to proved reserves from growth in the estimated recovery of discovered fields were based on field growth factors calculated from U.S. data (10).

Three scenarios were calculated: the low scenario, having growth of proved reserves plus cumulative production (for both new and older fields) at one-third of the U.S. rate and one-twentieth of the proved reserves produced annually; the middle scenario, having growth at one-half of the U.S. rate and one-sixteenth of the proved reserves produced annually; and the high scenario, having growth at two-thirds of the U.S. rate and one-twelfth of the proved reserves produced annually. However, if a country was already producing its reserve at a greater fraction than assumed in a scenario, then that country's fraction remained constant.

The Soviet Union and the United States account for about half of non-OPEC production, and in all scenarios the production of both countries is projected to decline U.S.S.R. production is projected to decline from 11.7 mmbbl of oil per day in 1988 to between 7.3 mmbbl per day and 7.8 mmbbl per day in 2010. By 2010, U.S.S.R. proved reserves are projected to decline by 22 bbo to 24 bbo even though 49 bbo to 53 bbo are added to proved reserves. U.S. production is projected to decline from 8.1 mmbbl per day in 1988 to 4.4 mmbbl per day in 2010. By 2010, U.S. proved reserves are projected to decline by 12.5 bbo even though 33.5 bbo are added to proved reserves.

Production from other non-OPEC producers is projected in 2010 to range from 0.4 mmbbl per day less than in 1988 to 4.1 mmbbl per day more. By that time, the non-OPEC producers outside the United States and Soviet Union are projected to have added 135 bbo to 154 bbo to reserves through discovery and development, although their proved reserves will decline from 122 bbo to about 100 bbo.

The net result is that by 2010 non-OPEC production, in all scenarios, will be below the 1988 level. By 2010, non-OPEC production is projected to decline from 38 mmbbl per day in 1988 to 29 mmbbl to 34 mmbbl per day. Total additions to non-OPEC proved reserves during this period are 241 bbo under the high scenario and 218 bbo under the low.

An annual world oil consumption growth of 1% implies, under the low non-OPEC production scenario, that by 2010 OPEC would be required to supply 43 mmbbl per day; under the high scenario, 38 mmbbl per day would be required of OPEC. For a 2% annual consumption growth, the corresponding OPEC production requirements would be 61 mmbbl per day and 57 mmbbl per day. Under the assumption of 1% consumption growth and the high scenario, OPEC would achieve 50% of world production in 2009. Under the assumption of 2% consumption growth and the low scenario, OPEC would achieve 50% of world production in 1998. OPEC's highest crude oil production was 32 mmbbl per day in 1973 and 1979.

About 10% of the liquid petroleum produced outside of OPEC is in the form of liquids extracted from natural gas and amounts to about 4 mmbbl per day. We projected future gas production by a method similar to that used for oil production. The result was that the production capability for natural gas liquids increased from 4 mmbbl per day to 7.6 mmbbl per day by 2010, with all but 0 to 0.5 mmbbl per day of the increase coming from increased gas production in the Soviet Union[11]. Even given the optimistic assumptions for gas demand growth, any net increase from liquids produced from gas is unlikely to postpone by more than a year or two the time when OPEC achieves 50% of the world's production of petroleum liquids.

*Crude oil alternatives.* During the next 20 years, additional crude oil will come from improved recovery of the oil remaining in discovered fields, extra-heavy oil, and bitumen. Recovery from such sources, however, has higher investment requirements than conventional oil production, and the rate of recovery has historically been low. Demand for crude oil could also be dampened by direct substitution of natural gas and the conversion of gas to liquid transportation fuels.

The National Petroleum Council's assessment of possible additions to U.S. crude oil reserves from enhanced oil recovery (EOR)[12] amounted to 14.5 bbo (27.4 bbo in the advanced technology case) on the basis of a $30 per barrel oil price in 1984 dollars. The dramatic 1986 price decline resulted in the suspension of many EOR projects such that significant contributions from EOR may not be realized before 2010. Applications of EOR are specific to location and field. Percentage increases in recovery from individual fields with atypical reservoirs cannot be extrapolated nationwide.

Venezuela's Orinoco extra-heavy oil belt contains the world's largest accumulation of extra-heavy oil (denser than water and fluid in the borehole). Of the estimated 1200 bbo remaining in the belt, some 267 bbo are judged to be recoverable. This oil requires upgrading to be used as a refinery feedstock. By the year 2000, 0.5 mmbbl per day of extra-heavy oil are planned to be produced from the Orinoco[13]; although this planned amount of production is obviously not limited by resources, its modest level suggests some restriction.

For at least 20 years, Canada has aggressively pursued development of bitumen (denser than water and not fluid in the borehole) as an alternative source of crude oil. Canada's 308 bbo of recoverable bitumen accounts for 75% of the world's recoverable bitumen. Production capacity is expected to grow from 0.18 mmbbl per day to 0.35 mmbbl per day by the year 2000[14]. Once again, the rate of production, although modest, is not limited by the resources.

Natural gas can displace oil as an energy source in stationary end uses and also can be converted to liquid transportation fuels. It is probably the most important alternative to conventional crude oil because less than 40% of the identified gas reserves are in OPEC countries, and on an energy equivalent basis ultimate gas resources are about equal to those of oil, whereas gas production has been only about half that of oil.

The list of countries (Table 2) with large reserve-to-production ratios, and hence a great capability to expand production, indicates the lack of local gas markets and the difficulty of transporting gas. Only about 10% of the gas produced enters international markets in pipelines, and only 3.3% (some 2 tcf) is converted to liquefied natural gas (LNG). Annual LNG trade is expected to grow, but under present incentives only to about 4 tcf to 6 tcf by 2010[15]. Its growth is limited because high capital costs require that it serve a stable market so that the plants can operate near capacity.

Conversion of gas to liquid transportation fuels, such as methanol, middle distillates, or gasoline, offers another means to enhance gas use and to diversify geographically the sources of liquid fuels. The technologies are sufficiently expensive, however, that they are applicable only to low-cost gas that cannot otherwise be marketed. Although it is unlikely without mandated environmental regulations or other incentives that methanol (a natural gas derivative) would gain wide use as a transportation fuel,[16] the markets for middle distillates and gasoline are already available and follow crude oil prices.

Technologies for producing these other liquid fuels have been developed and some have been commercially used, but none of the fuels has been produced on the scale required to affect significantly crude oil consumption. For example, Shell Oil in 1989 announced construction of a $660-million plant, the first of its kind, to convert 100 million cubic feet ($2.83 \times 10^6$ m$^3$) per day of gas to 500,000 metric tons per year of middle distillate fuels by the use of the middle distillate synthesis process.[17] Depending on the suite of fuels produced, the plant output could be 10,000 to 12,000 barrels per day. The apparent thermal efficiency of the process is between 62 and 64%. Assuming 5.8 million Btus (British thermal units) per barrel of crude oil (38 GJ/m$^3$) and 1000 Btus per cubic foot of gas (0.037 GJ/m$^3$) with a thermal efficiency of 62%, we calculate that 3.4 tcf of gas per year is required to replace 1 mmbbl per day of crude production.

The United States does not have sufficient low-cost gas to replace its declining crude production.[18] The required increases in gas production for the Soviet Union to so compensate, however, are well within its capability. The non-OPEC producers outside of the United States, Soviet Union, and Middle East account for 661 tcf of gas reserves and 2155 tcf of gas futures but only 15.6 tcf per year of production. It is possible, with massive investments in conversion plants, that a significant part of the projected decline between now and 2010 of between 4.2 mmbbl and

9.2 mmbbl per day of non-OPEC production could be compensated for by expansion of natural gas use in the Soviet Union and other non-OPEC countries.

However, gas conversion, as with all alternative fuels, requires substantial capital investments. Even if the increasing OPEC market share leads to significantly higher prices, capital markets may not judge the price increases to be sufficiently robust or stable for development of substitutes on a large scale.

REFERENCES AND NOTES

[1] J.F. Bookout, paper presented at the 28th International Geologic Congress, Washington, DC, 10 July 1989.

[2] C.D. Masters, D.H. Root, E.D. Attanasi, Annu. Rev. Energy 15, 23 (1990).

[3] C.D. Masters, E.D. Attanasi, W.D. Dietzman, R.F. Meyer, D.H. Root, in "Proceedings of the 12th World Petroleum Congress" (Wiley, Chichester, 1987), vol. 5, pp. 3-27.

[4] G.F. Ulmishek and H.D. Klemme, "U.S. Geol. Surv. Bull." 1931 (1990).

[5] A.M. Ziegler, C.R. Scotese, S.F. Barrett, in "Tidal Friction and the Earth's Rotation II," P. Brosche and J. Sunderman, Eds. (Springer-Verlag, Berlin, 1982), pp. 240-252.

[6] See Masters et al. (2) for a more extensive listing by country.

[7] "Reserves of Crude Oil, Natural Gas Liquids, and Natural Gas in the United States and Canada as of December 31," annual volumes from 1966 through 1979 (American Petroleum Institute, Washington, DC), vols. 21-34.

[8] "Energy Information Administration Report" DOE/EIA-0534 (U.S. Department of Energy, Washington, DC, 1990).

[9] "World Oil" 209 (no. 2), 30 (1989).

[10] D.H. Root, "U.S. Geol. Surv. Circ." 860 (1981).

[11] _____, E.D. Attanasi, C.D. Masters, "U.S. Geol. Surv. Open-File Rep. 90-280" (1990).

[12] "Enhanced Oil Recovery" (National Petroleum Council, Washington, DC, 1984).

[13] G.J. Fiorillo, in "Exploration for Heavy Crude Oil and Natural Bitumen," vol. 25 of "Studies in Geology," R.F. Meyer, Ed. (American Association of Petroleum Geologists, Los Angeles, 1987), pp. 103-114.

[14] R.A. Corbert, "Oil Gas J." 87, 33 (1989).

[15] "Pet. Intell. Wkly." 28 (suppl.) (no. 46) (13 November 1989).

[16] "Fuels to Drive Our Future" (National Research Council, Washington, DC, 1990).

[17] "Launch of Shell MDS Project" (News release, Shell Malaysia, Kuala Lumpur, Malaysia, 22 August 1989).

[18] R.F. Mast et al., "Estimates of Undiscovered Conventional Oil and Gas Resources in the United States—a Part of the Nation's Energy Endowment" (U.S. Geological Survey and Minerals Management Service, Washington, DC 1989).

[19] "Twentieth Century Petroleum Statistics" (DeGolyer & McNaughton, Dallas, 1988).

[20] "World Oil" 132, 58 (1951).

[21] "British Petroleum Review of World Gas" (British Petroleum Company, London, 1989).

[22] "World Energy Supplies 1950-1974," United Nations Statistical Paper Series J, no. 19 (United Nations, New York, 1976).

[23] Background information essential to the preparation of this article was developed in concert with our colleagues in the World Energy Resources Program of the U.S. Geological Survey and the Foreign Energy Supply Assessment Program of Energy Information Administration of the Department of Energy. Basic petroleum data derive primarily from Petroconsultants S.A.

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AMERICAN COUNCIL FOR AN ENERGY-EFFICIENT ECONOMY,
*Washington, DC, July 3, 1991.*

ENERGY SAVINGS ESTIMATES FROM ENERGY EFFICIENCY PROVISIONS IN THE JOHNSTON BILL (S. 1220) (BY HOWARD GELLER, ACE-3, STEVE NADEL, ACE-3, BILL PRINDLE, ALLIANCE TO SAVE ENERGY, AND BION HOWARD, ALLIANCE TO SAVE ENERGY)

INTRODUCTION

These energy savings estimates refer to the energy efficiency provisions in the comprehensive energy bill reported by the Senate Energy and Natural Resources Committee (S. 1220). Both the energy efficiency portion (Title VI) and the vehicle fuel economy portion (Title III) of the bill are covered. The energy savings calculations are relative to the baseline (the so-called current policy case), in the National Energy Strategy. It should be realized that some of the savings estimates are educated guesses due to the difficulty in projecting savings from regulatory reform, research and development, training programs, and the like. Also, in some cases, interactions between policy proposals are not taken into account. Thus, the savings estimates are necessarily approximations.

*1. Building energy efficiency standards (sec. 6101)*

This provision calls for establishing federal building energy codes based on ASHRAE or other consensus standards. New federally owned buildings would have to meet these standards, as well as homes financed through FHA, VA, and FmHA loans. Also, DOE is instructed to promote the adoption of the federal building energy code at the state and local level. The estimated energy savings in residential buildings are 0.01 Quads in the year 2000, 0.06 Quads/yr by 2010, 0.04 Quads cumulative during 1993-2000, and 0.40 Quads cumulative during 1993-2010.

Regarding commerical buildings, we assume that this provision results in 20% energy savings in about 25% of new commercial buildings constructed during 1993-2010. The estimated energy savings in commercial buildings are 0.08 Quads/yr in 2000, 0.26 Quads/yr by 2010 0.27 Quads cumulative during 1993-2000, and 2.04 Quads cumulative during 1993-2010.

*2. Residential home energy efficiency ratings (sec. 6120)*

This provision directs DOE to promulgate guidelines for home energy rating systems and provide assistance to states in support of adoption of a voluntary national home energy rating program. This type of provision should have a modest influence on housing energy efficiency. Assuming that this propsoal leads to efficiency upgrades in approximately 7% of homes at the time of sale, we estimate savings of 0.04 Quads/yr by 2000, 0.10 Quads/yr by 2010, 0.13 Quads cumulative during 1993-2000, and 0.78 Quads cumulative during 1993-2010.

*3. Manufactured housing standards (sec. 6103)*

This provision directs DOE and HUD to assess and make recommendations concerning energy efficiency standards for manufactured housing (i.e., mobile homes). It is assumed that stricter standards are adopted that affect 200,000 housing units each year starting in 1993, with average savings of 20 MBtu per year per unit. The estimated total energy savings are 0.03 Quads in the year 2000, 0.07 Quads/yr by 2010, 0.14 Quads cumulative during 1993-2000, and 0.68 Quads cumulative during 1995-2010.

*4. Creation of research centers for energy-intensive industries (sec. 6104)*

This provision calls for expanded R&D and joint ventures to improve the efficiency of energy-intensive industrial processes. This initiative is not likely to result in energy savings by 2000, but some technological changes and energy savings should result over the long run. We assume that this initiative leads to a modest reduction in energy intensity of 0.5% in the five most energy-intensive industries by 2010. Estimated energy savings are 0.1 Quads/yr by 2010 and 0.6 Quads cumulative through 2010.

*5. Report to Congress on how to achieve different levels of national energy intensity reduction (sec. 6105)*

While this type of study and report could be extremely useful, it is not clear if it will lead to actions that would otherwise not occur. Also, any implementation effort would likely contain the policies and responses called for in other sections of the bill. In order to avoid taking credit for energy savings that are highly uncertain and to avoid double counting of savings, no direct savings are assumed from this provision.

*6. Voluntary guidelines for industrial auditing and industrial insulation levels (sec. 6106)*

This section instructs DOE to develop voluntary guidelines for industrial audits, which when used should lead to better identification of cost-effective energy savings measures in factories. However, it could make the audits more complex and costly. Without further incentives, we assume that there is no net increase in adoption of conservation measures and no net energy savings.

This section also instructs DOE to develop voluntary guidelines for insulation levels in industrial facilities and to conduct come education and technical assistance. Authorization levels for the latter are relatively limited, however. We expect that this provision will have a small impact. We estimate negligible energy savings in by 2000, 0.1 Quads/yr of savings by 2010, 0.2 Quads cumulative during 1993-2000, and 1.0 Quads cumulative during 1993-2010.

*7. Energy efficiency labeling for windows and window systems (sec. 6107)*

This provision establishes a national program for rating and labeling the efficiency of windows and window systems. Since window efficiency testing and labeling is not yet systematically occurring, this initiative should result in energy savings. We assume that this initiative leads to a moderate efficiency improvement (i.e., use of one low-emissivity coating) in 25% of the window glass produced during 1993-2000 and a somewhat greater efficiency improvement again in 25% of window glass produced during 2001-2010. The estimated energy savings are 0.1 Quads/yr by 2000, 0.2 Quads/yr by 2010, 0.2 Quads cumulative during 1993-2000, and 1.7 Quads cumulative during 1993-2010.

*8. Energy efficiency information (sec. 6108)*

This provision directs the Energy Information Administration to collect more data and issue annual reports on energy use and conservation efforts. While these activities are useful, they do not lead to energy savings. This section also calls for a report to Congress on the costs and benefits of establishing reporting requirements and voluntary energy efficiency targets for energy-intensive industries. Since only a report is required, no energy savings are assumed.

*9. Energy efficiency labeling for lamps and luminaires (sec. 6109)*

Since the nominal power level and light output of lamps are already widely available and used, there will be no energy savings from mandatory lamp labeling. On the other hand, the efficiency of luminaires (i.e., fluorescent light fixtures) is not readily available at present. Thus, testing and labeling the efficiency of luminaires should help purchasers who are interested in energy performance. Assuming that efficiency labeling affects 90% of new fixtures starting in 1994 and results in a 1% efficiency improvement on average, the resulting energy savings are 0.01 Quads/yr by 2000 and 0.02 Quads/yr by

2010. Cumulative savings are estimated to be 0.02 Quads during 1994–2000 and 0.16 Quads during 1994–2010.

*10. Equipment efficiency standards (sec. 6110)*

This provision requires DOE to develop testing and labeling procedures and set minimum efficiency standards on certain types of lamps, commercial air conditioning equipment, and utility distribution transformers. We assume that DOE sets reasonable standards in all areas and that the standards take effect in 1996. Based on a separate analysis for each product involving assumptions about the expected efficiency standards, estimated energy savings per product, and projected sales of each type of product, combined energy savings are estimated to equal 0.4 Quads/yr by 2000, 0.5 Quads/yr by 2010, 1.5 Quads cumulative during 1995–2000, and 6.3 Quads cumulative during 1995–2010.

*11. Energy efficiency labeling for commercial office equipment (sec. 6110)*

Section 6110 also calls for an efficiency rating and labeling program for commercial office equipment (i.e. personal computers, printers, copiers, and the like). This measure should have some impact because such information is not provided to consumers at the present time. Assuming that efficiency labeling results in a 10% reduction in electricity use on average starting in 1995, the resulting energy savings are 0.07 Quads/yr by 2000 and 0.07 Quads/yr by 2010. Cumulative savings are estimated to be 0.22 Quads during 1994–2000 and 0.95 Quads during 1994–2010.

*12. Showerhead efficiency standards (sec. 6111)*

This provision establishes maximum flow rate requirements on showerheads, which will reduce hot water use. The standards are included in the bill and are supposed to take effect beginning in 1992. Projected energy savings are equal to 0.1 Quads/yr by 2000, 0.2 Quads/yr by 2010, 0.3 Quads cumulative during 1992–2000, and 1.8 Quads cumulative during 1992–2010.

*13. Federal energy efficiency (sec. 6201–6203)*

The subtitle on federal energy management includes requirements for implementing cost-effective conservation measures in federal buildings, creation of a modest fund for financing energy efficiency improvements, a fund incentives for facility energy managers who do an outstanding job, and provisions to accelerate the use of shared savings arrangements. These provisions should have some impact on federal energy use. The estimated energy savings are 0.02 Quads/yr by 2000, 0.1 Quads/yr by 2010, 0.1 Quads cumulative during 1993–2000, and 0.4 Quads cumulative during 1993–2010.

*14. Utility regulatory reform so that utilities have financial incentives for pursuing energy efficiency measures (sec. 6301–6302)*

This section amends the PURPA legislation and requires states to consider regulatory changes that would make energy efficiency investments in power generation, supply, as well as end-use profitable for utilities. This initiative should result in some states reforming their regulations sooner than they otherwise would, which will result in both more aggressive end-use conservation programs and efficiency improvements in power supply. However, this bill does not contain the "conservation as qualifying facility" provision offered in the Wirth bill (S. 741), so it is assumed that the impact is somewhat reduced.

Regarding potential improvements in end-use efficiency, it is assumed that the initiative leads to an expansion in utility-sponsored end-use electricity conservation programs by $100 million/yr starting in 1994, $900 million/yr by 2000, and $2.0 billion/yr by 2006 and thereafter. This implies maximum additional expenditures on conservation programs that are equivalent to about 1% of current nationwide utility revenues. The estimated energy savings from this portion of the initiative are 0.1 Quads/yr by 2000, 0.6 Quads/yr by 2010, 0.3 Quads cumulative during 1994–2000, and 4.1 Quads cumulative during 1994–2010.

Regarding potential improvements in power supply efficiency, it is assumed that the initiative leads to 1% and 2% average energy savings in all coal, oil, and gas-fired power plants by 2000 and 2010, respectively. The estimated energy savings from this portion of the initiative are 0.3 Quads/yr by 2000. 0.7 Quads/yr by 2010, 1.1 Quads cumulative during 1994–2000.

*15. Energy efficiency at TVA and certain Federal Power Marketing Authorities (sec. 6303–6304)*

This proposal requires least-cost planning and implementation of programs to require cost-effective energy efficiency resources at TVA and two of the smaller federal power marketing authorities (the Southeastern and Southwestern Power Administrations). For the relevant utilities, it is assumed that this initiative leads to 5% electricity savings by 2000 and 12% savings by 2010. The resulting energy savings estimates are 0.1 Quads/yr by 2000, 0.2 Quads/yr by 2010, 0.25 Quads cumulative during 1994–2000, and 1.9 Quads cumulative during 1994–2010.

*16. Vehicle fuel economy standards (sec. 3101–3116)*

Title III of S. 1220 requires the Secretary of Transportation to conduct a rulemaking to prescribe new CAFE standards for cars and light trucks for the periods 1996–2001 and 2002 and thereafter. The legislation states that standards should be considered by size class and should be stated in terms of percentage improvement by manufacturer. It also indicates the criteria that should be used in considering the feasibility new CAFE standards.

The Secretary of Transportation is required under existing law to set tougher CAFE standards if this is found to be technically and economically feasible—new legislation providing this authority is unnecessary. Since the current Secretary and the Bush Administration in general have indicated strong opposition to tougher CAFE standards and since nothing in the Johnson bill increases the likelihood that stronger standards will be found feasible and will be promulgated, we assume that this initiative provides no net energy savings.

In fact, the legislation contains some details that could erode energy savings if by chance tougher standards are adopted. In particular, the bill states that the percentage improvements for individual manufacturers should be determined in part by weighting sales by vehicle size class. This removes the incentive that manufacturers now have to sell small cars and the disincentive they now have to sell large cars. Also, the bill eliminates the three-year limit on carrying forward CAFE credits for cars sold starting in 1996 and it allows CAFE credits to be transferred among manufacturers.

*17. Scrappage of older vehicles (sec. 3117)*

Title III also contains a provision that directs the Secretary of Energy to co-fund state programs that encourage early retirement of pre-1980 cars. But expenditures under this section are to be made from a fund established using fees collected from manufacturers that fail to meet the CAFE standards. Assuming this bill will not lead to stronger CAFE standards, there will be minimal or no fees on manufacturers for noncompliance and consequently minimal or no federal funds for promoting scrappage of older vehicles. Therefore, we assume that this provision produces zero energy savings.

CONCLUSION

The energy efficiency initiatives in S. 1220 are expected to result in modest energy savings. Specifically, we estimate savings of about 1.4 Quads/yr by 2000 and 3.4 Quads/yr by 2010. Compared to DOE's most recent reference case forecast, savings of this magnitude represent 1.5% and 3.2% of projected energy use in 2000 and 2010, respectively. The cumulative energy savings are 4.6 Quads through 2000 and 29.0 Quads through 2010. The latter is equal to about 2% of projected national energy use during 1993–2010 according to DOE.

Although this amount of savings is much greater than the energy savings estimated from the original Johnston bill (1), it is still far less than the savings that are possible from a comprehensive and strong package of energy efficiency provisions. Adopting meaningful vehicle fuel economy standards such as those contained in the Bryan bill (S. 279) and other proposals included in the Wirth bill (S. 741) could result in 14.6 Quads/yr of energy savings by 2010 and nearly 133 Quads of savings cumulatively during 1993–2010 (2). This is over four times more energy savings thatn what is estimated from the energy efficiency initiatives in S. 1220.

Regarding primary energy savings by fuel type from the provisions in S. 1220, the estimated cumulative energy savings during 1993–2010 consist of approximately 2 Quads of oil, 15 Quads of coal, 7 Quads of natural gas, and 5 Quads of nuclear, hydro, or other renewables. The cumulative oil savings through 2010 equal nearly 400 million barrels, which is only about 3% of the oil savings that could result if the energy bill included specific, strong vehicle efficiency standards. The estimated electricity savings are 75 billion kWh/yr by 2000 and 159 billion kWh/yr by 2010. The latter is equivalent to the electricity typically supplied from approximately 55 large (500 MW) coal-fired power plants.

TABLE 1.—ESTIMATED ENERGY SAVINGS FROM ENERGY EFFICIENCY PROVISIONS IN S. 1220

| Proposal | Savings in 2000[1] | Savings in 2010[2] | Cumulative savings— 1993–2000 | Cumulative savings— 1993–2010 |
|---|---|---|---|---|
| Building standards: | | | | |
| Residential | 0.01 | 0.06 | 0.04 | 0.40 |
| Commercial | .08 | .26 | .27 | 2.04 |
| Home energy ratings | .04 | .11 | .13 | .78 |
| Manufactured housing standards | .03 | .14 | .07 | .68 |
| Industrial research centers | — | .1 | — | .6 |
| Report on different levels of energy intensity reduction | — | — | — | — |
| Industrial auditing and insulation guidelines | .0 | .1 | .2 | 1.0 |
| Energy efficiency information | — | — | — | — |
| Product testing and labeling | | | | |
| Windows | .1 | .2 | .2 | 1.7 |
| Commercial office equipment | .1 | .1 | .2 | 1.0 |
| Lamps and Luminaires | .0 | .0 | .0 | .2 |
| Equipment efficiency standards | .4 | .5 | .5 | 6.3 |
| Federal energy efficiency | .0 | .1 | .1 | .4 |
| Showerhead standards | .1 | .2 | .3 | 1.8 |
| Regulatory reform: | | | | |
| Demand-side | .1 | .6 | .3 | 4.1 |
| Supply-side | .3 | .7 | 1.1 | 6.1 |
| Efficiency at TVA and PMA's | .1 | .2 | .2 | 1.9 |
| Vehicle fuel economy standards | — | — | — | — |
| Scrappage of older vehicles | — | — | — | — |
| Total | 1.4 | 3.4 | 4.6 | 29.0 |

[1] Quads per year.
[2] Quads per year.

NATIONAL WILDLIFE FEDERATION,
*Washington, DC, July 12, 1991.*

Hon. PAUL WELLSTONE,
*702 Hart Senate Office Building, Washington, DC.*

DEAR SENATOR WELLSTONE: On June 13, 1991, we sent you a letter outlining our reasons for opposing passage of S. 1220. On behalf of these organizations, I am forwarding the attached synopsis, which is a more detailed analysis of the most offensive provisions of the bill. On reviewing the synopsis, we hope you will agree with us that S. 1220 does not provide our country with the energy policy Americans expect, need, or deserve.

Sincerely,

JAY D. HAIR.

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From American Rivers, Energy Conservation Coalition, Environmental Action, Friends Committee on National Legislation, Friends of the Earth, Greenpeace, Izaak Walton League, League of Women Voters, National Audubon Society, National Wildlife Federation, Natural Resources Defense Council, Nuclear Information and Resource Center, Public Citizen, Safe Energy Communication Council, Sierra Club, 20/20 Vision National Project, U.S. PIRG, Union of Concerned Scientists, The Wilderness Society

ANALYSIS OF SELECTED PROVISIONS OF S. 1220, THE JOHNSTON-WALLOP "NATIONAL ENERGY SECURITY ACT"

The Senate Energy Committee bill, S. 1220, would significantly alter current national energy policy and regulatory oversight of energy industry actions. In our view, the bill would damage our environment, increase taxpayer and consumer subsidies of the oil, gas, coal, and nuclear industries, and restrict public participation in energy decision-making processes. Some of the most egregious provisions of the bill in each of these areas are outlined below.

It should also be noted that the bill was rushed through the legislative process at a pace that frustrated thorough examination and debate of its provisions by most of the Senators on the Energy and Natural Resources Committee, much less the press and the public. This is not the way to develop an energy policy that can win the support of the American public.

ASSAULTS ON THE ENVIRONMENT

*Global Warming*

While the National Academy of Sciences has called for a concerted program to buy insurance against global warming, the Energy Committee is busy promoting increased use of coal, the fuel with the greatest greenhouse impact. The committee went so far as to adopt an amendment, offered by Senator Wallop and heavily lobbied by the Administration, that deletes a requirement that the Department of Energy be required to identify the policies needed to stabilize and reduce emissions of carbon dioxide, the principal greenhouse gas.

*Hydropower*

The bill proposes the most radical and dangerous changes in hydropower regulation in the Federal government's history of involvement in this area. It is essentially an attempt to deregulate the majority of hydropower projects in the United States. Section 5302 of the bill would allow states to take over regulation of hydroelectric projects of 5 megawatts or less in capacity (about two-thirds of currently licensed projects are under this threshold), and would provide virtually no standards or directions to the states for such regulation. Existing licensees in this category would have the choice between federal and state regulation. The bill would effectively remove many projects from the applicability of National Environmental Policy Act (NEPA), the Endangered Species Act, and other key federal environmental statutes. This could lead to dewatering of thousands of miles of rivers and streams, and major damage to fisheries and wildlife.

S. 1220 eliminates the 70-year-old authority of the U.S. Forest Service and most other Federal land management agencies to set mandatory conditions for hydropower projects to protect Federal lands. Instead, the bill allows the Federal Energy Regulatory Commission (FERC) to override protection conditions set by land managers. The provision will fundamentally undermine established planning procedures for public lands and open the door to increased speculative hydro developments on national forests, wildlife refuges, military lands, and other public lands.

*Natural Gas*

Title XI of S. 1220 includes major changes to natural gas regulatory law to streamline approvals by FERC of new natural gas pipelines and facilities. The title creates new procedures that exempt both new gas pipeline and other facility construction and major facility repair and rehabilitation projects from NEPA reviews. The environmental implications of such projects include wide ranging impacts such as land impacts, impacts on wetlands, air pollution from compressor operation, disposal of PCB-laced oil from compressors and radioactive tracers injected into storage field wells.

*Sabotage of the Clean Air Act*

Section 14201 of Title XIV effectively destroys the Clean Air Program to protect air quality from pollution added by new construction projects at existing power plants. Under a misleadingly-titled "pollution-control" exemption, greatly broadened in Committee, the bill would allow unlimited air pollution increases at existing power plants for all such projects, and would not require the project to reduce any air pollutants at the plant where the construction occurs. As a result, the amendment would allow large pollution increases that damage public health and local air quality goals. All of these adverse affects would occur without notice to the public or opportunity to comment under the Clean Air Act.

A separate provision in this title would "grandfather" all expansion projects, no matter how large, at existing power plants from Clean Air Act requirements to use best emission control technology to limit nitrogen oxide emissions—a pollutant causing acid rain and urban smog.

*Drilling in the Arctic National Wildlife Refuge*

Title VII of S. 1220 would open the coastal plain of the Arctic National Wildife Refuge to oil and gas leasing and development. Oil development on the coastal plain means building an industrial complex similar to Prudhoe Bay in what the Fish and Wildlife Service calls the "biological heart" of the only conservation system unit in North America that protects the full spectrum of arctic and sub-arctic ecosystems. In order to allow development to proceed, the bill would waive the requirement refuge uses be "compatible" with the purposes for which the refuge was established.

In destroying the Refuge's wilderness values, development also threatens the integrity of an undisturbed, thriving ecosystem blessed with spectacular wildlife—polar bear, musk oxen, and the 180,000 member Porcupine Caribou herd represent just a few of the species. All this would be sacrificed just to gamble on the chance that there might be enough oil to supply only 2 percent of our country's current consumption.

*Offshore Drilling*

Title XII of S. 1220 threatens fragile and productive coastal areas by directing the Minerals Management Service to conduct a reassessment of all Outer Continental Shelf (OCS) areas currently under either legislative or administrative moratoria. MMS is then asked to recommend which of these currently protected areas should be placed in the production base. The industry's record with marine oil development, from the Santa Barbara spill of 1969 to the Exxon Valdez tragedy, clearly shows the danger and potential damage from oil activity in sensitive coastal environments.

*Vehicle Fuel Economy Standards*

Title III of S. 1220 would leave increases in the Corporate Average Fuel Economy (CAFE) standards up to the discretion of same Department of Transportation that vigorously opposes any increase in the CAFE standards, and that reduced the standards for automobiles from 1986 to 1989. The result of this provision would be ever-increasing oil consumption and emissions of both conventional pollutants and of carbon dioxide (the principal greenhouse gas) by the nation's light vehicle motor fleet.

*Electric Utility "Deregulation"*

Title XV of S. 1220 purports to increase competition in the electric utility industry by "reforming" the Public Utility Holding Company Act (PUHCA). In fact, it would not enhance real competition, but instead would allow utilities to shift a major portion of new power plant construction and electricity sales to the wholesale market, which is regulated by FERC rather than the states. This would undercut the growing move to "least-cost" or "integrated resource planning,"

which requires consideration of energy efficiency investments as alternatives to new power plant construction and in many cases, consideration of environmental pollution costs in planning decisions. This has been a state-level phenomena, sparked by progressive utility regulators, consumer advocates and environmentalists; it has been largely ignored, if not actively resisted, by utility regulators at the federal level.

TAXPAYER RIP-OFFS AND INDUSTRY GIVEAWAYS

*Uranium Enrichment*

Title X of S. 1220 would require the government to write off 95 percent of more than $10 billion of unrecovered costs of DOE's enrichment program and would repeal Section 161v of the Atomic Energy Act, the statutory provision requiring full recovery of all costs by the DOE. The bill also authorizes $300 million to subsidize cleanup efforts of the uranium mining industry's mill and processing sites.

*Synthetic Fuels Program*

Section 14103 of S. 1220 establishes a "coal refining program"—in reality, a new synthetic fuels program. The provision provides an open-ended funding authorization ("such sums as may be necessary") for the government to conduct a coal-based synthetic fuels demonstration and commercialization program for a host of applications, including transportation fuels. The section also requires the Secretary of Energy to solicit proposals for joint venture "commercial scale" synthetic fuels demonstration projects, and to enter into agreements for construction of at least two such projects by the year 2000. This provision ignores the disastrous history of the late, unlamented Synthetic Fuels Corporation, and would lead to waste of untold hundreds of millions of taxpayer dollars.

*Pork-Barrel Coal Promotion*

Subtitle A of Title XIV contains a variety of additional proposals to spend taxpayers' dollars promoting the expanded use of coal here and abroad. Amendments adopted in Committee expand the scope and expense of these coal subsidy programs. Particularly disturbing is a proposal for a Cabinet-level Council to promote coal-technology exports. Under this provision, the United States would urge countries around the world to acquire the coal habit. U.S. tax dollars would be spent to lobby the World Bank and other international lenders on behalf of the coal industry and to subsidize foreign coal use.

*Impact Assistance*

Title XII of S. 1220 would divert OCS leasing revenues from the Land and Water Conservation Fund—used to purchase critical pieces of wildlife habitat and prime recreation land all over the country—into a coastal state and local community impact aid program. In essence, this fund is created to bribe coastal states and communities into tolerating oil development off their shores. Money intended to benefit the environment is instead snatched away to facilitate OCS development with potentially disastrous environmental consequences.

*Arctic Refuge Revenues*

The projected Federal revenue from leasing the coastal plain of the Arctic National Wildlife Refuge would be used to fund many of the boondoggles in S. 1220. Thus, as much as 50 percent of the money gained from sacrificing the Arctic Refuge would be used to help pay for a bad energy "policy" that emphasizes production above all else and subsidizes the coal and oil industries. Furthermore, the bill's projected amount of Arctic leasing revenue is blatantly inflated. The nearly 2 billion dollars predicted to come in from the first lease sales averages out to over 6,000 dollars per acre. By contrast, two recent, comparable lease sales on the Alaskan North Slope averaged just $33 and $153 per acre.

In addition, the bill rewards oil and gas companies that violate environmental requirements by promising full compensation in the event their leases are cancelled.

*Hydropower*

S. 1220 authorizes the Energy Secretary to study development and expansion of hydropower at all government dams and water resource facilities without requiring cost sharing by likely project beneficiaries. This violates legislatively and administratively established cost-sharing principles. It is an open invitation to development of many projects that damage the environment and are not cost-effective.

The bill also includes authorization for both feasibility studies *and* construction, without cost-sharing requirements, of "water conservation features" at Federal reclamation water projects (aimed at making more water available for Federal hydropower generation and reducing pumping power demands at Federal irrigation projects). The costs of this provision would be borne by the taxpayers, but any net increase in power generation will not result in a proportionate increase in power sale revenues to the Treasury. While improving water use efficiency is a laudable goal, it does not have to be, nor should it be, funded by extending and expanding the already huge Federal irrigation and power subsidies.

*Utility Abuses*

The PUHCA "reform" provisions of S. 1220 would allow utilities to create affiliated power generating subsidiaries, which could sell power in the wholesale markets, including to their own state-level retail companies. Logic and experience both show that such "self-dealing" cannot be truly competitive, or effectively regulated. These utilities can draw on the assets provided by their captive retail customers to subsidize the price at which they offer power to other utilities or large industries in the wholesale market. Such "cross-subsidization" abuses both the utility's ratepayers and its competitors in the wholesale power market.

*"Advanced" Nuclear Reactor Commercialization*

Title VIII of S. 1220 would authorize DOE to conduct a commercialization program for so-called "advanced" nuclear reactor technology, including the construction of one or more prototype reactors. The federal government would bear as much as one-half of the overall cost of these demonstration reactors, which are likely to cost several billion dollars each. This provision of the bill commits the American taxpayer to financing yet another series of "Clinch River"-style nuclear boondoggles.

RESTRICTIONS ON PUBLIC PARTICIPATION

*Eminent Domain*

Title XI of S. 1220 would allow gas pipeline companies and other private corporations to invoke powers of eminent domain to seize and condemn public and private lands with no requirement that any government agency approve the location or size of the project, or determine whether the facility serves a public need. The bill creates an "Optional Certificate Procedure" which prohibits FERC from holding a public hearing on whether the certificate should be granted.

*Nuclear Licensing*

Title IX of S. 1220 would severely restrict citizen and state participation in the siting, licensing and oversight of new nuclear power plants. "One-step" licensing would essentially eliminate any opportunity for intervenors to raise *significant, new* safety issues after the Nuclear Regulatory Commission granted a combined construction and operating license for a new nuclear plant, and would prevent any real opportunity for judicial review of NRC refusals to consider such issues.

*Utility "reform"*

The Public Utility Holding Company Act currently prohibits anyone but utilities from owning and operating generating facilities, with limited exceptions. The changes proposed in Title XV of S. 1220 would remove this restriction, but would not assure that such non-utility projects receive adequate regulatory review. State authority over nonutility power producers is, at best, unclear. And S. 1220 would give FERC and the Securities and Exchange Commission no authority over construction decisions by these entities at all. Without a state or federal regulatory forum, citizens will be unable to raise concerns about the need for, wisdom of, or alternatives to, major new power plant construction programs.

*Hydropower*

Subtitle C of Title V of S. 1220 establishes the Federal Energy Regulatory Commission (FERC) as an unprecedented "NEPA czar" by making it a statutory "lead agency" for purposes of applying the National Environmental Policy Act in licensing of all hydropower projects and requires all other federal agencies to rely on the substance of FERC's environmental document for their reviews. This contradicts current environmental law.

The bill also allows FERC to set mandatory deadlines for all other state and federal agency submissions and to take hydro licensing actions without the required submissions if agencies fail to meet Commission deadlines. The effect of these changes will be to reduce opportunities for involvement of state agencies and the public in hydropower licensing.●

## ORDERS FOR TOMORROW

Mr. BREAUX. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 9 a.m. Friday, August 2; that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; and that the Senate then resume consideration of S. 1507, the Department of Defense authorization bill.

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

## RECESS UNTIL 9 A.M. TOMORROW

Mr. BREAUX. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent that the Senate stand in recess under the previous order until 9 a.m. tomorrow.

There being no objection, the Senate, at 11:26 p.m., recessed until tomorrow, Friday, August 2, 1991, at 9 a.m.

## NOMINATIONS

Executive nominations received by the Senate August 1, 1991:

### DEPARTMENT OF JUSTICE

MAURICE T. TURNER, JR., OF THE DISTRICT OF COLUMBIA, TO BE DIRECTOR OF THE BUREAU OF JUSTICE ASSISTANCE. (NEW POSITION)

### DEPARTMENT OF VETERANS AFFAIRS

ALLEN B. CLARK, JR., OF TEXAS, TO BE DIRECTOR OF THE NATIONAL CEMETERY SYSTEM, DEPARTMENT OF VETERANS AFFAIRS, VICE JOANN KRUKAR WEBB, RESIGNED.

### CORPORATION FOR PUBLIC BROADCASTING

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR THE TERMS INDICATED:

FOR THE REMAINDER OF THE TERM EXPIRING MARCH 26, 1992:

KAY COLES JAMES, OF VIRGINIA, VICE WILLIAM LEE HANLEY, JR., RESIGNED.

FOR A TERM EXPIRING MARCH 26, 1996:

VICTOR GOLD, OF VIRGINIA, VICE R. KENNETH TOWERY, TERM EXPIRED.

### NATIONAL SCIENCE FOUNDATION

IAN M. ROSS, OF NEW JERSEY, TO BE A MEMBER OF THE NATIONAL SCIENCE BOARD, NATIONAL SCIENCE FOUNDATION, FOR THE REMAINDER OF THE TERM EXPIRING MAY 10, 1992, VICE HOWARD A. SCHNEIDERMAN, DECEASED.

### THE JUDICIARY

PHILIP G. REINHARD, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS VICE A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

JON P. MCCALLA, OF TENNESSEE, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE VICE A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

### DEPARTMENT OF JUSTICE

C. WESLEY PHINNEY, JR., OF MAINE, TO BE U.S. MARSHAL FOR THE DISTRICT OF MAINE FOR THE TERM OF 4 YEARS VICE EMERY R. JORDAN, RETIRED.

### DEPARTMENT OF EDUCATION

B. ROBERT OKUN, OF THE DISTRICT OF COLUMBIA, TO BE ASSISTANT SECRETARY OF LEGISLATION AND CONGRESSIONAL AFFAIRS, DEPARTMENT OF EDUCATION, VICE NANCY MOHR KENNEDY, RESIGNED.

### EXECUTIVE OFFICE OF THE PRESIDENT

FRANCIS S. M. HODSOLL, OF VIRGINIA, TO BE DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET. (NEW POSITION)

EDWARD JOSEPH MAZUR, OF VIRGINIA, TO BE CONTROLLER, OFFICE OF FEDERAL FINANCIAL MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET. (NEW POSITION)

### FARM CREDIT ADMINISTRATION

GARY C. BYRNE, OF CALIFORNIA, TO BE A MEMBER OF THE FARM CREDIT ADMINISTRATION BOARD FOR THE TERM EXPIRING MAY 21, 1996, VICE MARVIN DUNCAN, RESIGNED.

### INTERSTATE COMMERCE COMMISSION

KAREN BORLAUG PHILLIPS, OF VIRGINIA, TO BE A MEMBER OF THE INTERSTATE COMMERCE COMMISSION FOR A TERM EXPIRING DECEMBER 31, 1996. (REAPPOINTMENT)

### THE JUDICIARY

GARLAND E. BURRELL, JR., OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALIFORNIA, VICE A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

JULIE E. CARNES, OF GEORGIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA VICE ROBERT H. HALL, RETIRED.

DAVID A. FABER, OF WEST VIRGINIA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA VICE A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

## CONFIRMATIONS

Executive Nominations Confirmed by the Senate August 1, 1991:

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

JOYCE ELAINE TUCKER, OF ILLINOIS, TO BE A MEMBER OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR A TERM EXPIRING JULY 1, 1996.

### COMMISSION ON NATIONAL AND COMMUNITY SERVICE

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE BOARD OF DIRECTORS OF THE COMMISSION ON NATIONAL AND COMMUNITY SERVICE FOR THE TERMS INDICATED:

FOR TERMS OF 1 YEAR:

GAYLE EDLUND WILSON, OF CALIFORNIA.
GEORGE WILCKEN ROMNEY, OF MICHIGAN.
KAREN SUSAN YOUNG, OF CALIFORNIA.
WILLIAM J. BYRON, OF THE DISTRICT OF COLUMBIA.
GLEN W. WHITE, OF KANSAS.

FOR TERMS OF 2 YEARS:

RICHARD FREDERICK PHELPS, OF INDIANA.
ALAN KHAZEI, OF MASSACHUSETTS.
PAUL N. MCCLOSKEY, JR., OF CALIFORNIA.
REATHA CLARK KING, OF MINNESOTA.
SHIRLEY SACHI SAGAWA, OF VIRGINIA.
WAYNE W. MEISEL, OF MINNESOTA.

FOR TERMS OF 3 YEARS:

DANIEL J. EVANS, OF WASHINGTON.
MARIA HERNANDEZ FERRIER, OF TEXAS.
FRANCES HESSELBEIN, OF PENNSYLVANIA.
PATRICIA TRAUGOTT ROUSE, OF MARYLAND.
JOYCE M. BLACK, OF NEW YORK.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.