SENATE—*Thursday, February 6, 1992*

(Legislative day of Thursday, January 30, 1992)

The Senate met at 8:45 a.m., on the expiration of the recess, and was called to order by the Honorable ALAN J. DIXON, a Senator from the State of Illinois.

The PRESIDING OFFICER. The prayer this morning will be offered by our guest chaplain, the Imam Wallace D. Mohammed, Muslim American Spokesman, Calumet City, IL.

PRAYER

The Imam Wallace D. Mohammed, Calumet City, IL, offered the following prayer:

Our Creator, the merciful benefactor, the merciful Redeemer who opens for all people a way to have good conscience and a good life:

Grant to this Nation that Americans continue to live as a prosperous nation of "many in one" and as a people of faith taking pride in human decency, industry, and service.

Let us pray that this great Nation's two centuries of national life may inspire other nations to move toward social and economic justice for all.

Grant that her big heart for charity, compassion, repentance, and mercy continue to beat strongly within all of us. Grant that Americans always have more hope than troubles and ever grow in goodness and in wisdom.

Bless Americans to always cherish our freedom and the noble essence of the American people.

Grant that we Americans understand better our brothers and sisters around the world and reject unsuitable national pride for a global community of brotherhood and peace.

Bring all citizens and Government together, those of great means and small means, to appreciate more our Nation's solemn pledge of liberty, peace, and justice for all.

Bless our homes and our schools.

Bless the parents, our troubled youth, our burdened inner cities to never be without hope or direction. Bless Americans to keep to the best of our ways.

Bless Americans to cherish more the pride of industry.

Bless the efforts of the President and all other efforts in progress for more jobs and more opportunity to be in this great society for more of us.

Bless matrimony and families here and in all the world.

Increase for the President of the United States, for every Member of the Senate, and for every Member of the House of Representatives, the excellence of man's spirit and the excellence of the intellect of the statesmen so that they may build a better America for us all. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER (Mr. KOHL). 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, February 6, 1992.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HERB KOHL, a Senator from the State of Wisconsin, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. KOHL 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.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein.

TODAY'S HISTORIC PRAYER

Mr. SIMON. Mr. President, history was made in a small way this morning. We had an invocation by Imam Mohammed, the first Muslim to offer an invocation here in the U.S. Senate.

I think it is important that we reach out to one another, whether we are Christians, Jews, Muslims, Buddhists, whatever our belief or lack of belief. This morning's Washington Post has a story about Muslims fleeing persecution from what we have generally called Burma in the past.

The intolerance that is around the world in too many places is a cause for grief and is a cause for bloodshed and tragedy. What has happened this morning is the Imam Mohammed, who is known in the Chicago area and around the Nation for reaching out to people of other beliefs and for preaching tolerance and understanding—his presence here today is, first of all, a tribute to him. I was pleased to join my colleagues, Senator DIXON and Senator HATCH, in cohosting his presence here today.

But it is a reminder to all of us, whatever our beliefs; yes, be firm in your beliefs, but also do not let excessive pride cause disruptions in our society, whether it is on the basis of religion, race, national background, or what it is. I hope today is one more small step in creating a nation and a world where there is more understanding.

Mr. DIXON addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Illinois [Mr. DIXON] is recognized.

IMAM MOHAMMED'S INVOCATION

Mr. DIXON. Mr. President, I thank my distinguished colleague and friend from Illinois, Senator PAUL SIMON, for those remarks.

Today is a historic day, Mr. President, in the life of the U.S. Senate and in the country at large. For the first time in the Senate's history, the invocation has been given by an individual of the Muslim faith. I am proud that one of my constituents, the leader of African-American Muslims in the United States, the Imam Wallace D. Mohammed, was the first Muslim leader to deliver an invocation in the U.S. Senate.

Mr. President, he is an outstanding leader in interfaith development, believing that unity amongst peoples makes us stronger as a great nation. He is correct, Mr. President, and I applaud his efforts to date, and I urge his continued good works in the future.

I would like to thank my colleagues, Senator PAUL SIMON and Senator ORRIN HATCH, as well as the Chaplain of the Senate for their assistance in making this historic day possible.

I thank my colleagues.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

A GREAT DAY FOR THE U.S. SENATE

Mr. HATCH. Mr. President, I would like to join in the remarks of my distinguished and great colleagues from Illinois. This is a great day for the U.S. Senate and for our country in having Imam Wallace Mohammed with us today, the first Muslim to pray in the U.S. Senate. We could not have made a better choice. There is not a better

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

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man in America or better religious leader who is trying to do what is right for his people in the inner cities, in jobs, in teachings of morality and decency, and in so many ways that help those who need help, to lend a helping hand.

Mohammed is a great man. He is a kind man. He is a compassionate man. He is a decent man. And it is an honor for us to have him in the Senate this day. I think it is fair to note that some of his greatest friends are sitting in the gallery today, some of whom are known by people all over the world, people of all faiths, of all religions. So we have made great strides today in the Senate, and I think the Senate is honored to have this great religious leader with us. I look forward to continuing an association and friendship with him and with his people for many years to come in the future.

I want to thank the distinguished Senators from Illinois and others who have worked hard to have Imam Mohammed with us today.

Thank you, Mr. President. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. NUNN. Mr. President, what is the pending business?

The ACTING PRESIDENT pro tempore. The pending order of business is the Senator from Georgia is recognized to speak for up to 30 minutes.

INVESTING AMERICA'S PEACE DIVIDEND

Mr. NUNN. Mr. President, in a series of speeches last week I talked about the contributions and sacrifices that our men and women in uniform made in winning the cold war. I also outlined the support we have provided to our military personnel and why such continued support is necessary in the future.

Today I want to discuss the impact of the defense builddown on the military members and the civilian workers in our defense establishment. Their dedication, their talents, and their commitment helped our Nation win the cold war. These men and women truly are our real peace dividend. We have an obligation to keep them from becoming victims of their own success. In meeting this obligation, we have an opportunity to invest this peace dividend in people and in America's future.

HUMAN IMPACT OF THE DEFENSE BUILDDOWN

The dramatic—and in most cases welcome—changes in the international security environment during the past year mean that some of the traditional threats to our national security have changed radically and fundamentally. The disintegration of the Soviet Union and the demise of Soviet communism mark the end of the cold war. We hope it will not return. Although the world remains a dangerous and uncertain place, the changes in the international security environment mean that we can reduce the amount of our own spending on national defense.

This reduction in defense spending is welcome because it comes at a time when we have a soaring Federal deficit and a great number of unmet domestic needs. But reductions in defense spending will have an unfortunate impact on a great many people in our Defense Establishment.

Last week, Secretary of Defense Dick Cheney and Gen. Colin Powell told the Armed Services Committee that 1 million people, civilian and military, will be released from the rolls of the Defense Department by 1996. That is 1 million jobs lost, just in the Department of Defense.

The employment picture in the U.S. defense industry is also bleak. A study by the Defense budget project last August predicted that private sector defense industry employment would decline by over 800,000 jobs from 1990 to 1996 as a result of the defense spending reductions in the budget summit agreement. With the additional program terminations in the administration's fiscal year 1993 amended budget request, and any additional cuts Congress may make, the total loss of defense industry jobs is bound to be over 1 million. Added to the Defense Department jobs, this represents 2 million less jobs in the next several years.

This loss of over 2 million defense-related jobs by 1996 stands in stark contrast to what has happened in the recent past. The Bureau of Labor Statistics shows that there has been a net increase of only 20,000 jobs in the whole U.S. economy in the last 3 years. These are very sobering figures for all of us who are anxious to return the economic growth necessary to pull the Nation out of the current recession.

It is a real irony that the victory of the United States and our allies in the cold war means the loss of 2 million defense-related jobs. These people are not losing jobs because they failed—they are losing jobs because they won. The Nation owes all of them—military members, DOD civilians, defense industry personnel, and their families—more than just a simple "thank you" for a job well done. We owe them an opportunity to use the skills that helped win the cold war to address some of our pressing public and private sector needs.

Mr. President, if we act wisely, we can turn the enormous problem of excess talent in defense occupations into the enormous asset of new talent in nondefense occupations. This talent can become an investment in our future productivity and economic growth.

If we fail to act, we may not only inhibit recovery from the current recession—we may also lose our best opportunity that recovery can lead to long-term and permanent economic growth.

DOMESTIC NEEDS

Clearly there is plenty of work to do at home. Too many of our colleges and universities must fill science and engineering classes with foreign students, in part because too many public schools in our country do not do an adequate job of teaching math and science. There is too much crime on our streets and highways, and too few law enforcement officials working to keep them safe. Too many hospitals and nursing homes need skilled staff, and too many Americans need health care at home, away from expensive institutions. Too many young people pass through the critical turning points of early childhood and early adolescence without the attention they need to keep up with their peers in school and in a competitive world with their peers in other countries.

We saw just in this morning's paper the results of recent math and science scores putting Americans near the bottom of these categories in competition all over the world.

People leaving defense-related jobs cannot solve all these problems; all of them cannot be absorbed in such critical jobs. We can, however, ensure that those who can contribute in critical occupations are given every opportunity and every incentive to do so.

MILITARY PERSONNEL AN IMPORTANT SOURCE OF SKILLS AND TALENT

Adam Walinsky recently wrote a thoughtful column in the New York Times pointing out a number of areas where military personnel could contribute to solving some of our pressing domestic needs. While I do not share his view on one of his key suggestions, that is that military people should remain in the services to work in domestic programs, I do share his view that these military personnel can make an important contribution in a number of areas in our society. I ask unanimous consent that his article be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. NUNN. Mr. President, public schools—our first line of defense in the fight for global markets—can clearly benefit from people with the skills that they have learned in the military.

Sixty percent of our military officers have baccalaureate degrees, and another 35 percent of our military officers have a masters degree or higher. In addition, all of our military personnel must complete formal or on-the-job-training in their military skill. Much of this training is in skills that are directly transferable to our civilian economy skills like construction work; electrical engineering; computers; vehicle and aircraft maintenance; communications; law enforcement; accounting and financial management; and a whole range of medical skills.

After receiving their training military personnel are challenged daily to perform in a highly competitive environment that rewards discipline, leadership, teamwork, and professional excellence, exactly the qualities we need in our commercial sector and in our public service jobs.

Many of these military members are highly sought after by the private sector, but some of them should be encouraged to enter the teaching profession through alternative teacher certification programs like the one suggested by former Lieutenant Governor of Texas, Bill Hobby. Both he and Deputy Assistant Secretary of the Army for Training and Education Patricia Hines have written recent articles advocating this concept, and I ask unanimous consent that both articles be printed in the RECORD at the end of my remarks.

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

(See exhibit 2.)

Mr. NUNN. Over the next several years, thousands of military personnel who have baccalaureate or masters or advanced degrees in math and science will be leaving the military services. Many of these individuals have been instructors in our military training establishments, which are among the best in the world. Many of these individuals could step right into teaching jobs in our colleges and universities, but, unfortunately, unless laws are changed at the State level, they are not able to move into our elementary and secondary schools because of archaic State teaching certification requirements. Texas and New Jersey are actively recruiting teachers through streamlined alternative certification programs, and my own State of Georgia, under the leadership of Gov. Zell Miller is stepping up its efforts in this area and making changes so we can improve our performance in math and science by attracting more qualified teachers into these professions of math and science and also attracting more minorities into teaching.

Noncommissioned officers who may not have a college degree can be recruited to work as administrative assistants in schools where discipline is a problem. I can assure you that a Marine Corps or Army drill sergeant knows how to maintain order and discipline. I am not suggesting that our schools should be run like military basic training. But these former military instructors can adapt their leadership skills to the civilian teaching environment, help ensure discipline, and free up teachers to do what they are trained and paid to do—to teach. I do not know of anything that teachers tell me more than if they had someone to help with discipline in their classrooms, they could greatly increase their productivity.

Although public schools should be the first place we look for investing this human peace dividend, there are other fields in which separating military personnel have already trained and performed. For example, the Pentagon runs one of the largest health care systems in the world, operating 800 medical and dental facilities and 170 hospitals worldwide. This medical establishment will be reduced, and skilled military medical personnel will be leaving the services. There are also many other military personnel who can be quickly trained to move into the civilian health care field.

Large numbers of military police and personnel in law enforcement-related skills will be leaving the services. Many of these individuals have gone through the extremely rigorous screening program required for sensitive jobs in our government, including guarding nuclear weapons, and they would be a tremendous asset to any law enforcement organization in the country.

Finally, Mr. President, there are many critical community service jobs that do not necessarily require technical skills but require dedicated people with the kind of leadership skills the military prides itself in developing. For example, the Cities in Schools Program is a private, nonprofit organization that currently has local programs in 18 States to reclaim school drop outs and potential drop outs. This program is working closely with the Pentagon to employ former military personnel—because they are the right kind of people for this type of critical work.

THE NEED FOR BALANCED REDUCTIONS IN MILITARY STRENGTH

Mr. President, the military services face a unique challenge in reducing their personnel strength over the next 5 years. I pointed out last week that in the past we have reduced the size of the military services by demobilizing large numbers of draftees, most of whom were delighted to see their term of service end or cut short.

We have a very different situation today. All military members on active duty are serving because they volunteered to do so. They all entered the military services with the expectation that if they performed well, they would have a rewarding and fulfilling career in uniform. The coming reduction in the size of the military services means that many of these volunteers will no longer have the opportunity to complete their military career.

In the past 2 years Congress has enacted a safety net of pay and benefits—including separation pay and voluntary separation incentives—to ease the burden on those military members who have to leave the services through no fault of their own. These benefits will be used primarily by military members with less than 15 years of service. The military services understandably, are very reluctant to separate people with 15 to 20 years of service because these people are so close to the 20-year retirement point. However, the 225,000 people in this category represent 12 percent of the active duty force. Unless some reductions are made in this group, the services will be left with an unbalanced force with too many senior officers and noncommissioned officers. I should also point out that the officers and NCO's in this group are among the most highly trained and best qualified for jobs outside of the military services.

VOLUNTARY EARLY RETIREMENT

I believe there is a way to provide incentives to encourage military members in this 15 to 20 years of service group to voluntarily retire early and to take jobs in the fields of education, health care, law enforcement and other critical areas in our communities. The initiative I am working on and will propose to Congress would:

Help the military services reduce strength in senior grades by providing authority for the Secretary of Defense to offer early retirement to military members with 15 to 20 years of service;

Encourage separating military personnel to go into critical jobs such as teaching, law enforcement and health care; and

Facilitate any training in the necessary skills for these critical jobs in our communities.

Mr. President, I wish to take just a few moments this morning to summarize the three key provisions of this initiative.

The first provision would give the Secretary of Defense the authority to allow the voluntary retirement of military personnel with between 15 to 20 years of service during the period of the defense build down. This is not permanent. This is during the transition period. Individuals who retire under this provision would be eligible for immediate retired pay based on the current formula of 2.5 percent for each year of service multiplied by their basic pay. For example, an individual retiring with 15 years of service would receive 37.5 percent of basic pay. For a mid-grade noncommissioned officer, E-6, this would amount to $587 per month. These personnel would also be eligible for all other military retirement benefits, including medical care and discount shopping in military exchanges and commissaries.

This provision would provide the military services with an important personnel management tool that they do not have now to make reductions in the 15- to 20-year segment of the force. This early retirement authority is unusual, but it has been used in the past—most recently in the late 1930's—to help reduce surpluses in the ranks of the military services. In my view, this is a very appropriate time to use this early retirement authority again to help the military services reduce in a

balanced, humane, and productive way. The military services will be able to offer this early retirement option, if the legislation I will introduce passes, to any military member with between 15 and 20 years of service who is in a surplus skill category.

The second provision of this initiative is an incentive for military personnel who choose this early retirement option to enter critical jobs in our communities. Under this provision, those military members who retire early and enter approved jobs in education, law enforcement, medical services, or other critical fields would be eligible to increase their military retirement years of service credit by 1 year for each year of such employment, up to a total of 20 years. For example, an individual who retired after 15 years of military service could accrue up to 5 years of additional credit in an approved job, for a total of 20 years. These retirees would later receive a one-time recalculation of retired pay based on their increased years of service at age 62. In the example I just used, the individual would begin drawing 37.5 percent of basic pay starting if he or she retired at 15 years of service and begin drawing 50 percent of his basic pay starting at age 62.

The third provision of this initiative would help separating military personnel get any education or training that is a prerequisite for employment in a designated critical job in our society. Some of this training can be provided in the existing military training establishment. Other training or education that is not available must be provided through civilian institutions and programs.

Currently, most military members are eligible for the Montgomery GI bill benefit, which provides up to $350 per month for postservice education after leaving the military. I suggest expanding the opportunity for all military personnel, particularly those whose military skills are not readily transferable to the civilian economy, to use this benefit for full time schooling while, if they so choose, they are still on Active Duty. This would allow military members in the combat arms, for example, to enroll in a course of training or education leading to service in critical civilian jobs in our communities. Personnel who take advantage of this opportunity would be placed on an educational leave of absence of up to 1 year with basic pay, and upon separation, be required to affiliate in the individual Ready Reserve for 4 months for each month of training or education received under this provision.

Mr. President, these three key provisions—voluntary early retirement authority, incentives for public service in critical skills, and enhanced postservice education and training—create a winning situation for everyone affected by this program:

The military services will win because they will have another incentive to help them reduce the size of their career force.

Individual military members will win because they will have greater opportunities for postservice training and for critical important jobs, once they leave the military services.

America's communities and our local education establishments will win because they will benefit from the infusion of trained and talented people from the military services—especially in critical educational areas where we are woefully inadequate, particularly in the areas of math and science, but not only in those areas; but also in the area of language.

I cannot think of anything we need more in our society than the ability of people to speak foreign languages if we are going to compete in world trade. We have many, many schools that do not have adequate language teachers, and we have many, many people getting out of the military who do have these talents and the ability to teach.

Finally, Mr. President, our country will win because we will invest the tremendous talent that won the cold war in solving some of the Nation's pressing problems that will affect our future and particularly affect our economic growth.

Mr. President, I do not believe this initiative will result in significant increased costs to the Federal Government in the long term because the early retirement provision will produce potentially significant offsetting savings.

Although the early retirement provision would result in an immediate increase in the number of people leaving active duty who have between 15 and 20 years of service, I want to stress that these would be people who would have otherwise stayed on active duty until they completed the normal 20 years of service for retirement. The early retirement provision would move up the retirement dates of some of these people, and there would be a short-term increase in retirement outlays. However, the military services would avoid having to pay the salaries of those who choose to retire early, and therefore reduce active duty pay and allowance costs.

The early retirement provision would also reduce long term retirement costs. The lifetime retirement benefit for a person retiring with less than 20 years of service under the early retirement option is less than the lifetime retirement benefit of that same person if he or she retired at 20 years of service.

For example, a midgrade noncommissioned officer [E–6] retiring at 15 years of service would receive 37.5 percent of his annual basic pay or $7,640 per year. The same individual retiring at 20 years would receive 50 percent of his annual basic pay or $10,675 per year. Assuming the actuarial life expectancy for this individual is 30 years from the age at which the individual would have completed 20 years of service, the individual would receive $52,900 less in lifetime retired pay if he or she retired at 15 years of service. In this case, even though the individual would draw 5 more years of retirement pay, the individual does so at a lower basic pay level and at a lower years for service multiplier than if the individual retired at 20 years of service.

Mr. President, I hope that this important option for our military men and women and for our Nation's economy will be enacted. The Pentagon must lead the effort to establish this transition program for separating military personnel. This means that the Defense Department must make sure that the number of military personnel allowed to retire early is consistent with the manpower needs of the military services. The Defense Department must ensure that the early retirement program is coordinated with other voluntary separation programs to reduce the military personnel inventory in a balanced way. And the Defense Department must develop a program to match separating military personnel who wish employment in critical jobs in our communities with job vacancies, and identify any intervening training or education that would be required for these jobs.

Finally, it is important that standards for alternative certification are developed, including appropriate criteria for military training and experience, and that the States adopt these standards. I am encouraged that the National Conference of State Legislatures, and the Education Commission of the States are beginning to work along these lines.

Mr. President, I believe this legislation will go a long way toward applying the wealth of talent that our separating military personnel have to offer in correcting some of the problems we have at home. I will be working with Senator GLENN and Senator MCCAIN, the chairman and ranking minority member of the Manpower Subcommittee of the Armed Services Committee, along with Senator WARNER and other members of the Armed Services Committee on this initiative. I will also be consulting Chairman ASPIN, Congressman DICKINSON and the members of the House Armed Services Committee. I invite my colleagues to join me in developing this concept.

TRANSITION ASSISTANCE FOR CIVILIAN DEFENSE WORKERS

In addition to military personnel, there will be large numbers of Defense Department civilian employees and workers in defense industry who will lose their jobs and who are losing their jobs now because of the restructuring of our defense establishment. There will be about 1 million of these at least

in the next 3 years. Like their uniformed counterparts, they face significant challenges of career transition. I think we owe these people more than a handshake and best wishes for finding a job in this recessionary economy. I believe that the human cost of career disruption, the value of this human capital to our economy, our pressing domestic social needs, and the economic challenges we face as a nation demand that we develop a program of transition assistance which responds to the needs of these individuals and to the needs of our economy.

Two years ago we anticipated the problems in the defense sector of the economy that would be caused by the restructuring and down sizing of the defense establishment. The National Defense Authorization Act for fiscal year 1991 authorized a comprehensive program of economic adjustment, diversification, conversion and stabilization assistance for individuals and communities adversely affected by the closure, realignment or reduction of military installations and industrial plants.

Under this program, the Secretary of Defense was authorized to make economic planning grants to communities affected by the defense drawdown. The Secretary of Labor was authorized to make grants to States, employers, employer associations, and representatives of employees to provide training, career adjustment assistance and employment services to employees adversely affected by reductions in defense spending.

The Secretary of Commerce was authorized to help affected communities and regions develop economic redevelopment strategies, and the Administrator of Small Business was authorized to assist small businesses, which have been heavily dependent on defense business. A total of $200 million was authorized and appropriated for this initiative in fiscal year 1991.

At the time, the Bush administration opposed the creation of this program. Since then, they have been slow to implement the assistance programs authorized by this legislation, and the tangible benefits for individuals and communities affected by the defense build down have been delayed. It took the better part of a year for the Defense Department to decide to actually spend the funds authorized and appropriated for these programs. The Commerce Department only recently agreed to fund economic redevelopment initiatives through the Economic Development Administration using these funds. Training and other transition assistance grants through the Department of Labor are only now beginning to reach those employees directly affected by reductions in defense spending almost 18 months after the legislation was enacted.

Mr. President, there is no excuse for these kinds of delays, especially in light of the economic conditions we are now facing. In the next several years, the job losses in the Department of Defense and the U.S. defense industry are going to reach unprecedented levels compared to recent years. Last August, for example, a Defense budget project study predicted that in fiscal year 1993 alone, which begins next October 1, 300,000 jobs would be lost in the U.S. defense industry—and that was before the program terminations called for in the administration's fiscal year 1993 Defense budget.

Mr. President, make no mistake about it, if we accelerate the President's rate of Defense expenditure cuts, there are going to be more people out of work. As we debate marvelous new programs, tax incentives, and spending programs and say let us take it out of Defense, remember that every time we do that, we are going to be losing jobs immediately and up front, hopefully in order to create jobs down the way. Some of that may be necessary, some of it may be desirable, but we should understand what we are doing.

I think we need to go back and look at expanding the scope of—and increasing the funding for—the program of assistance for displaced Defense Department civilian employees and workers in the U.S. defense industry.

In the future, the Defense Department will increasingly rely on dual-use technologies and manufacturing processes—that is, processes that can be used in both the defense and the nondefense arena—as the central feature of our acquisition policy. In addition, we will depend heavily on a robust commercial industrial base as the foundation for our reconstitution strategy in the event of a national emergency.

It is essential that we not dissipate the huge pool of talent that we have assembled in the defense industry as we reduce the size of our Defense Establishment. We have thousands of skilled individuals, as well as numerous research teams and design teams, that can contribute significantly to our industrial revitalization while maintaining their ability to participate in defense-related acquisition programs, if needed, in the future. It will take effective planning, training, and coordination to ensure that these talents are effectively converted into viable commercial sector applications.

The first step should be to designate a single department and a single official in the Federal Government responsible for ensuring an effective, coordinated program of transition assistance. The future of the industrial base that supports our national security is at stake here, and for that reason I believe that the responsibility for this effort should be centralized in the Department of Defense under the Secretary of Defense.

The Secretary of Defense, as I view it, should assume responsibility for administering the economic adjustment and transition programs for individuals and communities affected by the closing of defense industries. Of course, DOD must use the talents and experience of the Labor Department, the Education Department, and other agencies. But this must not become a bureaucratic shuffle. One Department must be responsible and accountable. The Defense Department knows best the scope and timing of civilian defense industry job losses, as well as the kinds of skills which are affected. Through administration of these transition programs, the Defense Department can both mitigate the impact on particular communities and preserve the critical skills and capabilities that we need to maintain in our industrial base.

Mr. President, the Defense Department also has unique resources in the area of skill training. The military services operate the largest and most capable training establishment in the world. Every year, the military services train tens of thousands of people in a wide variety of critical skills.

The primary mission of the Defense training establishment will continue to be training soldiers to perform their jobs in the military services. But as we reduce the size of our military services over the next several years, there will be excess training capacity throughout the military training establishment. This excess capacity is essential if we are going to be able to reconstitute our forces effectively to respond to changing and increased threats.

Instead of simply eliminating this valuable source of critical skills training, I believe that the Defense Department should make an inventory of this excess training capacity and consider using it to provide training to both military and civilian defense workers who require new skills to move into new jobs. This initiative could preserve the crucial capacity of the military training establishment so that we could increase training of military personnel without delay. It could also provide valuable retraining for workers in skills our economy needs.

Mr. President, like their military counterparts, the civilian workers who are being displaced are talented people who have served their country well. They are losing their jobs because they were successful at what they did. We need to act now to make sure that this tremendous pool of talent is not wasted in the future.

AMERICA'S PEACE DIVIDEND

Mr. President, today we face two unique challenges that together supply an equally unique opportunity.

We face the challenge of competing in a knowledge and information based global economy in which our human capital is our most important resource.

We face the challenge of providing productive employment for up to 2 million highly skilled Americans in a pe-

riod of slow economic growth. The private sector will play the dominant role in absorbing this large number of skilled workers, but the Defense Department must play a key role in the transition process.

If we begin now to provide the right incentives, we can simultaneously help the military services build down in a balanced and humane manner; we can help military and civilian employees make a clean transition from defense to nondefense work; and we can help America invest its peace dividend—the skills and talents of these dedicated people—in the future of our communities, and the future of a productive economy.

I ask all my colleagues for their careful consideration and support of these initiatives, and I welcome any suggestions they may have for additions or changes.

I yield the floor.

EXHIBIT 1

[From the New York Times, Jan. 29, 1992]

OUT OF UNIFORM, INTO SERVICE

(By Adam Walinsky)

The Democratic candidates seem agreed on the need for deep cuts in the defense budget, perhaps to fund tax cuts for the middle class. The Congress is sure to go along with them. Cutting the budget will mean severe adjustments. Consider the people affected.

Thre was a great outcry when General Motors announced plans to lay off 74,000 workers by 1995. Defense budget reductions envisioned by Congressional leaders would require Gen. Colin L. Powell, chairman of the Joint Chiefs of Staff, to lay off about 500,000, many of them combat veterans. They would be thrown almost casually into an uncertain and troubled economy.

We must see these men and women not as a problem to be got rid of, but as a new reserve of energy and talent. The Federal Government should keep them on its rolls, at their current pay and allowances, and use them for three- or four-year terms of civilian service.

First, since the country is desperately short of police officers to face a rising tide of disorder and violence, 200,000 should be assigned to police forces across the country. Soldiers and marines would need training and tight supervision from civilian police authorities. But they would arrive more than competent to suppress gunfights, to corral wilding groups and generally to help keep the peace.

Second, 100,000 should teach in elementary and secondary schools and in remedial and vocational programs. Of the 500,000 likely to be discharged, 100,000 are officers, mostly college educated. Many of the senior enlisted men, are also highly experienced trainers.

Albert Shanker, president of the American Federation of Teachers, has said for years that the nation should capture these people to teach in elementary and secondary schools. They know how to teach job skills, are used to dealing with young people from impoverished backgrounds and would not be afraid to teach in rough neighborhoods, even in jails.

In the last four months, an Army hotline has drawn more than 11,000 inquires from officers interested in becoming teachers, many qualified to teach mathematics and science, for which good teachers are in short supply.

Third, 30,000 medical corpsmen should be assigned to hospital emergency rooms and public health programs. These technicians have been trained to deal with traumas, accidental and violent, like those inundating inner cities. The Special Forces, trained to bring basic public health practices to remote and primitive third world areas, can do at least that much at home, especially when tuberculosis and sexual diseases are spreading in new and more virulent forms.

America's continuing racial crisis gives such a program special urgency. Thirty percent of those likely to be discharged are black, while the population is 11.7 percent black. The military has been a great highway of advancement of talented men and women without regard to race or ethnic origin.

They should not be simply sent back to depressed communities as isolated individuals in search of a function and place. This program of reconstruction would bring them home with a special mission and the support of a committed nation. These are patriotic people of discipline and spirit—potential leaders whom we need. They would be inspiring examples to the legions of lost black and Hispanic children in ghettos across the country—and the rest of us, too.

This is not a permanent but a transitional program, at a time of special need. We must still establish the Police Corps, which both houses of Congress established last year and would enlist young people for four years of police service in exchange for college scholarships. And we will still require fundamental reform in education and health care. But it would bring our military people home to highly useful temporary and perhaps permanent jobs.

It would not reduce Federal outlays, but it could enormously increase our sense of security, prosperity and well-being. Personal safety, the quality of a child's education, quick assistance to the sick and injured—these are hard to quantify and are omitted from economic statistics. Yet they can determine personal and national satisfaction more surely than any number of things measurable in dollars.

America faces awesome problems of race, poverty and urban decay. Suddenly and unexpectedly, we will have at our disposal a great reservoir of strength to confront them. Let's use it.

EXHIBIT 2

[From the Washington Post, Nov. 24, 1991]

FROM THE ARMED FORCES TO THE CLASSROOM

(By Bill Hobby)

Within the next few years, hundreds of thousands of highly trained men and women will be mustered out of the armed forces.

Of the 750,000 soon-to-be veterans who will save military service during the next five years, about 150,000 are commissioned, warrant and senior noncommissioned officers. They are trained in vital technical skills and are natural leaders.

Though well qualified, many will not be able to find jobs that use those skills. Typically, these veterans will have spent one-quarter of their military careers as students or instructors in their specialties. Many of them will be men, many of them minorities.

They are in their forties and fifties, with twenty-odd productive years ahead of them. The nation has invested hundreds of millions of dollars in their professional training. In short, they are fine prospective high school teachers.

With the proper incentives, 75,000 might become teachers.

That many new teachers would not only be readily absorbed in the next five years, but welcomed into the classroom. About 90,000 potential new teachers a year now graduate from colleges of education. School districts hire more that 175,000 new teachers a year. The deficit is filled by the return of former teachers, teachers who have never taught despite being qualified to do so and new teachers from alternative certification programs.

More than 1 million new teachers will be needed in the next five years. Colleges of education will provide about half a million. Well-qualified veterans can help fill the gap.

With the growing dissatisfaction with the teaching profession and the pressure to find new sources of teachers, Texas and many other states have begun qualifying teachers in nontraditional ways.

These "nontraditional" teachers have done just as well as, or better than, education graduates on certification tests and on the job.

About 28 states now have such programs. These programs are an integral part of the President Bush's "America 2000" program for education. In his recent report to Congress, the president said: "The solution to the problem of attracting talented teachers is not to regulate the industry further but to open it up to the competitive process and to reduce certification requirements in ways that do not threaten but instead encourage excellence in teaching."

The inclusion of veterans in the president's solution for the teacher shortage makes sense.

Can people who have not graduated from college teach in high school? A college degree indicates maturity and knowledge. So does 10 or so years of service in the armed forces. I have never known a chief petty officer who could not teach a high school class. For centuries, noncoms have spent most of their time educating adolescent boys.

Teacher programs don't have to take years. College graduates in the Teach America program enter inner-city classrooms after three months of training. Could not mature veterans with 10 to 20 years of military service be trained in the same length of time? Of course. They could be teaching in the classroom in a matter of months.

The success of this program will be determined by the quality of the soon-to-be veterans willing to enter it. The quality will be determined by the incentives offered, most logically through the military retirement system.

Veterans leaving the service have pension benefits ranging from none for those with fewer than 20 years service, to 50 percent to 75 percent of final pay for those with 20 to 30 years of service and 75 percent for those with more than 30 years of services. The pensions, of course, are in addition to medical benefits of enormous value.

Under this approach, a qualified veteran who becomes a teacher would earn military retirement credit in the classroom. The credit could be either on a year-for-year basis or proportional. The cost of the additional benefit would be deferred until retirement of the teacher-veteran, who would also earn credit in the individual state's teacher retirement system.

A more costly alternative would be to offer the 15-year veteran a flat 40 percent pension (2.5 percent per year) for as long as the veteran teaches. The enhanced pension (50 percent) would be payable at the completion of five years in the classroom. This relatively small pension would compensate for the low entry-level pay of teachers.

Federal, state and local efforts would be needed to coordinate the program. Specific actions would include: promotion of the program within the military, modification of the retirement system, creation of state programs of alternative certification, mobilization of the colleges and universities and involvement of school districts in need of trained personnel.

Employing trained military personnel at or nearing retirement is a logical way to address several of our problems: the reduction of the armed forces, the need for more teachers and the stagnation of the economy present a unique opportunity for the nation.

[From the Wall Street Journal, Jan. 10, 1992]

FROM THE ARMED FORCES TO THE TEACHING FORCE

(By Patricia Hines)

A lack of qualified teachers, particularly at the high school level, is frequently cited as contributing significantly to America's education crisis. But if the Army has its way, America's shortage of qualified teachers will soon belong to the past.

Victory in the Cold War has precipitated one of the largest troop reductions ever undertaken by the U.S. armed forces. Within the next five years, more than 500,000 people will be making the transition to civilian life. Most will be seeking new careers that will enable them to apply the skills and experience gained in the armed forces to the civilian sector.

The Army is strongly encouraging these men and women to consider teaching as their new career. Utilizing information provided by the Department of Education, the Army has established hotlines here and in Germany, South Korea and Panama to assist those interested in obtaining teaching certificates. The response has been overwhelming. In just four months of operation, more than 11,000 calls have been received from military personnel.

A quick glance at the qualifications of these people reveals the vast potential waiting to be tapped by America's schools. Of the 250,000 men and women scheduled to leave the Army by 1995, 20% are officers, of whom 99% have baccalaureate degrees. At the rank of major and above, 80% have either master's degrees or doctorates. Many have taught full time at one of the military academics or served on the faculty of the U.S. Army Command and General Staff College, the National War College, or one of the Army branch schools.

In light of this nation's critical shortage of qualified math teachers, it is noteworthy that one-third of the officers leaving the Army are qualified to teach high-school math. In addition, according to a recent Army survey, between 10% and 20% have engineering backgrounds that would enable them to teach high school physics.

Yet look at how these would-be teachers are being received.

Take the example of Col. Duane Mills. Scheduled to retire from the Army in two years, Col. Mills decided to put his master's degree in history to good use in the classrooms of his native Missouri. However, he was told that he must first complete 15 to 20 hours of "methods" courses to obtain a teaching certificate. Since Col. Mills would have to hold down a full-time job while attending night school for his methods courses, the certification process would take a year and a half. Discouraged at this prospect, the colonel is looking for another job. The loss is Missouri's.

By contrast, Col. Albert Laferte retired from the Army two years ago and made a smooth transition into the teaching profession. With a degree in aeronautical science, Col. Laferte sought to become a high school math teacher in North Carolina. Fortunately for him, he was able to take the courses required to obtain certification while still on active duty at Fort Bragg and then began teaching math at Pine Forest Junior High School. He has since completed work on his master's of education and notes how enthusiastic North Carolina education officials are to have someone with his qualifications teaching junior high school.

Considering the academic credentials of some of our current teachers and the quality of our teacher-training programs, the U.S. is in no position to deny itself the windfall of talent preparing to leave the armed forces. These men and women are disciplined, highly motivated individuals with solid records of professional achievement. As role models, they are desperately needed in America's classrooms. Their response to the call for further service to their country has been encouraging, but their talents will go for naught unless we allow them to impart their knowledge to our children.

Clearly, it is time to address the problem of alternative routes to certification. States must be persuaded to remove the barriers that keep good teachers out of the classroom. Currently, 30 states have some form of alternative certification. Some of these programs are outstanding; others are badly in need of reform. States that have no program need to create one.

The U.S. is not lacking in politicians willing to spend untold sums of taxpayers' dollars on education. Yet the Army's program to put tens of thousands of eager, competent teachers into our nation's classrooms does not involve vast expenditures of money. Instead, it seeks to raise the quality of American education by providing our schools with an abundance of talented teachers.

As President Theodore Roosevelt noted, there is only one group of people as deserving of their nation's gratitude as our soldiers, and these are the people "who teach the children of the present how to be the masters of our country in the future."

For those truly interested in the welfare of our children, the fight for alternative teacher certification must be joined.

(Mrs. Hines is a deputy assistant secretary for training and education, Department of the Army. John Roddy, a policy analyst at the Department of Education, helped prepare this article.)

Mr. BENTSEN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Texas is recognized for up to 15 minutes.

DOWNSIZING THE MILITARY

Mr. BENTSEN. Mr. President, I just heard the distinguished senior Senator from Georgia ask for the careful consideration of this proposal. He automatically gets that. I know of no one that has more stature when we are talking about defense matters. He is a man of great integrity and ability. I am delighted to see a very thoughtful presentation. There is no question that they have to have a downsizing of the military. What we are looking at now is not two great super military powers, but just one, and we are it.

I think the general consensus is that the chances for a military confrontation of great magnitude have obviously been substantially lessened. The biggest confrontation it looks like we are going to have is going to be an economic one. When you make that kind of a transition in dislocations, the pain, problems, and concerns are there.

It is well that we have someone who gives us a well-thought-out proposal of how we can best make that transition, and I congratulate the Senator from Georgia.

THE URUGUAY ROUND

Mr. BENTSEN. Mr. President, I rise today to discuss an issue that I think is going to affect the well-being of Americans well into the next century. I am talking about the Uruguay round of multilateral trade negotiations. What a name. But it gets down to what is going to happen to the standard of living of our people over this next decade. It gets down to the point, are we going to go more and more in debt to other countries? Or are we going to turn that trade deficit around?

Those negotiations are now at a very important stage. Just before the Christmas holidays, the Director General of the General Agreement on Tariffs and Trade, Arthur Dunkel, released his draft of a comprehensive multilateral trade agreement. His text, some 451 pages, covers most of the topics that our negotiators have been debating since the Uruguay round negotiations began over 5 years ago.

He has set out an ambitious schedule. I understand his concerns. We need deadlines to try to get things moving. What he is calling for is a final phase of the negotiations. He set April 15 as the target date for countries to initial the final agreement.

I hope we can reach agreement by that date. I certainly urge our negotiators to press these negotiations as hard as they can. But we have some awfully tough negotiations remaining because once an agreement is reached, of course, then it has to come back to the Congress for approval, and only the Congress can implement this agreement. So it makes sense to take stock of whether the Dunkel text as it now stands can pass muster in the Congress.

I have taken soundings from many of my Senate colleagues. I have heard from many of the industry groups that have a stake in this process. I must say, Mr. President—and the time to say it is now, not when it is too late—I do not believe the Senate would approve the current text. Let me be clear. Let me state it again. The text simply is not good enough in its present form to pass the Senate, in my opinion.

And that certainly concerns me. As my colleagues know, I fought long and hard last spring to extend the President's so-called fast-track negotiating authority. I did it because I believed

strongly that the President must have the ability to negotiate the elimination of unfair foreign trade barriers. I do not believe a congressional body by itself can do that in negotiating with these other countries. I felt last spring, and I believe now, that the Uruguay round offers us an opportunity to get the biggest bang for our buck: negotiating with over 100 countries in one comprehensive negotiation, instead of trying to eliminate those barriers through a piecemeal, country-by-country approach.

I still believe that these negotiations are important. But we also have to face the facts. Today our economy is in a rut; it is in a ditch. We have a prolonged recession; that means that any agreement that comes back is going to face a very skeptical Congress. There are serious questions. Will we have a net increase in jobs when we sign this agreement, or are we going to have a net decease in jobs?

The fact is that trade policy has assumed an importance in our political debate that we have not seen in the past, and that is good. It is about time it did. Whatever we think about the President's trip to Japan, it certainly made crystal clear the link between international trade and jobs here at home. Trade has become prime time fare. That is good, but that also means that the Uruguay round is going to undergo as close a scrutiny as any trade agreement ever has and that any agreement is going to be held to a very high standard by the Senate and by the citizens of this country.

It all adds up to one central point: This Congress is going to be a tough sell when the Uruguay round agreement is sent up for approval. Under the Constitution that responsibility is ours. As it is currently drafted, I am convinced that the Dunkel text just will not pass muster. I warned the Director General about this before he put that text out. Once an agreement is reached, then we are going to have it here before us and the debate will be hot and heavy.

Today, it is not my objective to list all the deficiencies in the current text, but I do think it is important to make clear that any agreement is likely to be measured against certain guideposts. As it currently stands, I think the Dunkel text falls short in many respects.

Any agreement must open up foreign markets and provide substantial export opportunities for competitive American industries, but we are not there yet. The current text simply is not strong enough in key areas. In critical areas—like intellectual property, services trade, and agriculture—the current text does not assure us that we will open up foreign markets sufficiently or quickly enough. Our negotiators need to redouble their efforts to ensure that the deficiencies in the text are remedied.

Even more important is to talk about what is not in the text. In several key areas, the Dunkel text only provides a framework of rules for eliminating barriers. Specific commitments by the individual countries are yet to come. We must see substantial progress in reducing foreign tariffs and opening up those foreign services markets. In agriculture, we still have some very important negotiations ahead on what the framework of liberalization should be. Do you think Senators from farm States are going to approve it in its present form if it comes back without the concessions that have to be made, when we changed our agriculture program in this country to cut back on subsidies, to try to show good faith to the European Community? Well, there are going to be some tough negotiations that have to take place to get the country-by-country commitments.

In my view, these market access negotiations are the linchpin of the entire Uruguay round. Without substantial progress in these areas, I do not see how a Uruguay round agreement is going to win congressional approval.

Second, it is critical that any agreement preserves and strengthens our remedies against dumping, subsidies, and other unfair trade practices. That is one of the key negotiating objectives that we put into the 1988 Trade Act. It is still of importance, not just to me, but to the entire body of the Congress. It is essential that we retain the ability to protect any and all industries injured by unfair competition.

Third, the key objective of this round must be to ensure that all countries participate, all; we cut out the free riders. In the past, GATT rounds have largely involved agreements among a limited group of countries. That cannot be the case in this round because in many of the areas in which we want to see progress—services, intellectual property, market access, and investment—barriers are found in the developing countries.

For years, we have given many of these countries a "free ride" in the trading system. In the past GATT rounds, the big players, the United States, Canada, Japan, and the Europeans, would negotiate steep tariff cuts, but there was no incentive for many of the others to play along because the most-favored-nation principle guaranteed that everyone, everyone, would get the benefit of a tariff reduction. The result: At the beginning of the Uruguay round, the United States' average tariff was less than 5 percent; India's was 118 percent.

This round offers us an opportunity to correct that kind of an imbalance. The world has dramatically changed. The players have changed. The magnitude of their involvement in world trade has changed since the Tokyo round. Countries that were not major players in world trade are assuming increased importance today. Since the Tokyo round, our trade with the four newly industrialized countries of Asia—Hong Kong, Korea, Taiwan, Singapore—has tripled. Brazil, Argentina, Indonesia, Thailand are flexing their trade muscles, and that is fine. They are all in the big leagues now. It is important they act like they are in the big leagues and assume some of the responsibilities that go along with it.

This is the time to do it. We probably will not have another big round of multilateral negotiations for another 10 years. Those countries are important today and they will be even more important when you look at the trend line 10 years from now. That is why we have to lock in the benefits today. That means no more free riders.

In the past, countries did not need to sign on to all parts of the GATT agreements. That left some of the countries free to sign up for the benefits, but not to grant full concessions. The Dunkel text tries a new approach, and I congratulate him for that.

I have been talking about having GATT plus, so countries willing to assume greater obligations would get greater benefits. That would move us more toward free trade, but the free riders should be setaside.

So Dunkel's text works toward that. He establishes a new organization called the Multilateral Trade Organization, MTO, and the price of admission to the new organization is that a country must sign onto the entire agreement. And that part is good.

In other words, if a country wants to get the benefits of our tariff cuts or liberalization of our textile markets, it has to reduce tariffs in its markets, open its services markets and protect the intellectual property rights of U.S. companies. The dues to join this club are pretty stiff, but that is the way it ought to be. If a country does not want to pay the dues, they can make that choice, but it sure should not get the benefits of club membership.

That is strong leverage. Any country left out of the club will be at a serious disadvantage in world trade. And that leverage might help remedy our free rider problem. But you know what that is going to depend on. That is going to depend on the political courage, on the fortitude of the administration to use the stick that the MTO will provide and actually deny benefits to the countries that are not willing to meet the new Uruguay round standards.

And finally, I will be taking a close look at how the Uruguay round agreements will be enforced. In the 1988 Trade Act, we told our negotiators that providing for a more effective and expeditious GATT dispute settlement mechanism was one of our very principal negotiating objectives. But the catch is this: If we want tough rules and a fast and effective dispute settlement system when we are plaintiffs in

a case, we also have to live with the same rules when we are the defendants.

The administration has assured us all along that they would agree to a tough, binding dispute settlement system, but only if we also secured strong rules and good commitments from our trading partners to open their markets. After all, it does not help to have tough enforcement, if the rules you are enforcing are no good. Frankly, looking at the Dunkel text, I think we still have a good distance to go.

Mr. President, I support the concept of the Uruguay round. I sure hope we can reach a successful conclusion. But any agreement that is reached must gain the support of the U.S. Congress. And right now I simply do not think that support is there.

I am an optimist by nature. I believe the round can succeed. I think it is terribly important that it does. I do not see any cakewalk. I know our negotiators have worked hard. I have confidence in them. But we need to start with tough negotiations in the months ahead—negotiations that address every area that I have mentioned today; negotiations that produce an agreement that can be sold to a skeptical Congress in a time of recession. And that is no easy task. But it is absolutely essential if this Congress is to approve a Uruguay round agreement.

Mr. President, I yield the floor.

Mr. LUGAR addressed the Chair.

THE PRESIDING OFFICER (Mr. WIRTH). The Senator from Indiana is recognized to speak for up to 15 minutes.

Mr. LUGAR. I thank the Chair.

THE TIME HAS COME FOR ACCOUNTABILITY IN U.S. AGRICULTURE

Mr. LUGAR. Mr. President, in the strong State of the Union Speech delivered last week, President Bush stated that, "Government is too big and spends too much." This sentence more than any other struck a chord with the American people.

I rise today to declare that the time has come for a thorough review of the U.S. Department of Agriculture, and for fashioning a plan for trimming the ballooning waistline of this one Government department back to a leaner, healthier size. The leadership required to achieve this would set a constructive example of how one department can tighten its belt and improve its service to taxpayers and farmers alike—an example that should be replicated in other departments.

I stated here today—as a life-long participant in and admirer of American agriculture—to state as unequivocally as the President did last week: Enough is enough, when it comes to bloated government and bureaucratic self-perpetuation in USDA. President Bush has made a bold commitment to downsize U.S. Armed Forces by 30 percent over 5 years, with the dividend going toward economic revitalization and deficit reduction. It is now time for similar accountability in the Agriculture Department's $61 billion annual budget.

Several of us have tried over the years—and to some degree succeeded—in setting the gargantuan mass we call U.S. farm policy on a general path toward fewer market-distorting subsidies and greater market-oriented efficiency. We have argued in the last two omnibus farm bills that, ideally, farmers should produce the commodities people want to buy as signaled by market demand, not government fiat; should produce commodities as efficiently as possible; and should sell them aggressively to customers in the United States and abroad. In short, we have argued that when compared with the efficiency of market forces, government is all thumbs when it comes to handling the commodities which American farmers produce better than anyone else.

Mr. President, on September 3, 1991, the Washington Post's Guy Gugliotta summarized a General Accounting Office study released that day which spotlighted the waste, inefficiency, and lack of accountability prevalent in several USDA agencies. The report stated that the morass had grown steadily since the 1930's, when the Department last underwent major reorganization. The report, Gugliotta wrote, offers up striking conclusions, such as, "* * * the department could save $90 million per year on its budget expense through office consolidation."

As ranking member of the Agriculture Committee and one who remains the manager of my family's 604-acre farm, I have worked with my staff to attempt to simply get the facts. We have endeavored to determine the potential for monetary savings and improved performance highlighted by the 2-year long GAO review. This has not been an easy task.

In mid-November 1991, Chuck Conner, of the Senate Agriculture Committee, requested a reasonably thorough accounting of three basic items: First, the size and whereabouts of the Department's staff in Washington and across the Nation; second, the amount of tax money spent on and by these employees; and third, the nature of the work being performed by these individuals and offices.

On February 3, 1992—just 3 days ago—a white, three-inch thick binder arrived in my office. It was accompanied by a USDA memo stating in part that:

> You asked for the number of local USDA offices around the country. We have tried to get a straight answer to this question for as long as I have been here. Our staff still cannot give us an accurate number.
>
> The more we looked at this issue the more complicated it became. We are still unable to answer all the questions Mr. Conner raised.
>
> It will be some time before we see the fruit of all these efforts. Until more progress is made, we will be unable to answer exactly how many of these offices "overlap or are just unnecessary" or whether "there are USDA offices located within 30 miles of each other in some places while in other rural areas there may be a difference of a hundred miles."

My staff was told by USDA officials that, in fact, a thorough accounting of this type has not occurred in recent memory, perhaps for years. A private company that did not know the answers to such basic questions would have serious management problems.

My effort to learn more coincided with the publication in December and January of a series of investigative reports copyrighted by the Kansas City Star, which were authored by Star special projects writers Jeff Taylor, Gregory S. Reeves, and Mike McGraw.

Mr. President, these articles are rife with details of waste and inefficiency. For example, one Star story noted that, "In 1988 alone, the $15-billion Food Stamp Program lost at least $1 billion through payment errors and fraud." Another story stated that, "In Kansas City, the Department began installing a new computer system in 1983 to keep better track of billions of dollars of stored commodities. It was supposed to cost $7 million. Eight years later, the cost is approaching $61 million," a cost overrun of 871 percent.

The aggregate of the GAO study and the Star series clearly indicates that the failures of U.S. agriculture policy and the Department itself are larger than any one person. They are no single person's fault, and they are beyond any one person's ability to solve. Indeed, Agriculture Secretary Edward Madigan has been refreshingly honest in his assessments of the shortcomings of the Department. And he understands where some of the barriers to reform are. The Kansas City Star quoted him as pointing out that the GAO "say(s) we should consolidate more field offices. We would be happy to consolidate more field offices; we are prohibited by law from doing that. Some of them are in the districts of very influential Congressmen."

Mr. President, perhaps the saddest aspect of this predicament is that several forward-looking initiatives designed to help American agriculture maintain its competitive edge have either stalled or never gotten off the ground. According to the GAO, plans that collectively would make U.S. farmers more competitive against foreign producers are held hostage to bureaucratic inertia or lack of funding.

The GAO states that:

> Revitalizing USDA requires strategic planning processes throughout the Department, especially in merging areas such as marketing, food safety, water quality, and biotechnology. USDA agencies do not coordinate their marketing activities either within the Department or with other Federal agencies.
>
> * * * we continue to believe that a more proactive, organized approach is needed if

USDA is to lead American agribusiness towards more marketing-oriented agriculture.

This, the GAO says, risks "the loss of opportunities in food processing and marketing, the fastest growing aspects of global agribusiness."

U.S. BUSINESS/MANAGEMENT SCHOOLS TO REDESIGN USDA

Mr. President, the GAO study characterizes American agriculture and USDA specifically as a "mature corporation"—one serving fewer clients, but maintaining promise for strong revenues. We all know that reducing administrative overhead is nothing new to U.S. businesses. For decades, retailers, for example, have been engaged in several phases of restructuring.

To help overcome barriers to a more efficient USDA, we should tap into the expertise in corporate management that exists in prominent graduate schools in business and management throughout the Nation. To that end, I am asking these schools to compete in designing the best plan for restructuring the Department. Our universities and entrepreneurial genius are the envy of the world. Let us utilize this expertise to help design a new delivery system for USDA services so we can redirect taxpayer resources to promote another thing we do best, namely farming.

FARMERS, TAXPAYERS TO WEIGH IN WITH RECOMMENDATIONS

Mr. President, we should likewise reap the practical experience of millions of American farmers and taxpayers. I am asking all farmers who have wrestled desperately with the overwhelming tangle of redtape and form filling to let us hear about it loud and clear. To every farmer I ask: If you have ever stomped out of a local ASCS, Farmers Home, SCS, or Cooperative Extension Service office in frustration, let us know now that you support a remedy such as consolidation of these offices.

To all taxpayers I say: Speak out if you wonder why your taxes are supporting at least four separate offices in almost every county in the Nation, each with its own "reception services, copying services, printing costs, and mail services," as the GAO report points out.

Additionally, the report notes that "the ASCS maintains offices in over 85 percent of the 3,150 counties in the United States. Yet in 1986 only 516, or 16 percent of the counties were considered farm counties—this compares with over 63 percent in 1950." A farm county is defined as any county for which at least 20 percent of total income is derived from agricultural sources.

In 1932, USDA employed 32,000 persons to serve a predominantly agrarian society in which 25 percent of all Americans resided on a farm. Today, the USDA employs 110,000, while fewer than 2 percent now reside on a farm. This represents an increase from one USDA employee for every 1,000 farm residents in 1932, to today's level of one USDA employee for every 45 farm residents.

Mr. President, I am listening, and all comments will be welcome at the Senate Agriculture Committee. But comments need to be directed likewise to those who would stand in the way of progress in both branches of government. It is time for Members of Congress to put policy ahead of patronage. Now is the time to work together to reach beyond this litany of disturbing findings to identify practical and achievable solutions.

CONGRESSIONAL HEARINGS, REFORM LEGISLATION IN 1992

Mr. President, the U.S. Department of Agriculture is the third largest agency of the Federal Government. Secretary Madigan is not alone in recognizing departmental failures. In 1982, then Secretary John Block instituted an organizational review which is said to have faltered when confronted by internal opposition.

The September 1991 GAO report notes that:

> Agency and external opposition may pose strong barriers to any effort to restructure USDA's field operations. Actions that affect local offices typically generate concern not only in the local area but in the Congress as well.

It also states that,

> * * * the heavy constituent involvement has been criticized by some as the reason for difficulty in instituting reform: USDA is composed of a number of diverse, autonomous and entrenched local self-governing systems that, to varying degrees, are regulated by the constituent groups themselves.

Mr. President, Hoosier farmers, known for their wit and common sense, would call this "the tail wagging the dog." This problem and others should be addressed forthrightly. I plan to gather data, conduct a comprehensive review with congressional hearings and introduce legislation to streamline USDA. Questions will be asked and answered, and reforms will be recommended. I will ask the Agriculture Committee's chairman, the distinguished Senator from Vermont, and all other members of the Senate committee to aid this effort.

A CALL FOR A NATIONAL COMMONSENSE DIVIDEND

Mr. President, the responsible goal is to seek thoughtful, surgical cuts in the Department, rather than an across-the-board meat ax approach. But let there be no misunderstanding, if bureaucrats and special interests refuse to accept constructive change, there may be no alternative but to employ every measure at hand to save tax dollars.

Mr. President, through all this we must be mindful that the hard-working men and women employed in thousands of local USDA field offices across the country are frequently not to blame for much of the systemic malaise. Congress should move smartly to lessen the burden of unnecessary paperwork on each office. Congress should eliminate hundreds of archaic and largely useless agriculture reports mandated by law.

We must also not lose sight of the fact that an important part of the problem lies in the uncontrollable ant hill here in Washington known as USDA South, where hundreds of diligent people work hard at counting the precise number of avocados, for example, grown in each township of southern California—in order to keep produce supplies down so that prices will remain artificially high.

Mr. President, taxpayers have the moral high ground and should expect accountability on the part of congressional authors of mandated reports and other frivolous procedures required by law of USDA employees. There is no constituency for waste and mismanagement. But Members should count on a groundswell of public support for saving tax dollars.

There has been much talk since the Berlin Wall fell that domestic benefit can come from savings taken from our cold war military budget—a so-called peace dividend. We all admire the talent on the part of farmers to boil seemingly complex problems down into concise, commonsense truths. Now is the time for farmers and all taxpayers to ask for and to help create a national commonsense dividend—a dividend rooted in efficiency and frugality that, if duplicated in other Government departments, can lead to lower deficits, a stronger economy, and greater faith in public leadership.

The fewer dollars wasted on inefficient programs, the easier it will be to serve farmers and taxpayers through a progressive and aggressive, export-oriented USDA. The process starts with gathering reliable data; holding hearings and drafting meaningful legislation. Some people may try to defend the indefensible, but a searchlight of truth must shine on the honest costs of implementing U.S. agriculture policy. I will do my best to seek help in pursuing these objectives. I will not stop raising this issue until the Agriculture Department makes clear to me that substantial progress has been achieved. The American people, the American media, and Members of Congress should continue to speak out and help us do what is right for the Nation.

I thank the Chair.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Florida is recognized to speak up to 10 minutes.

RESTORE DEMOCRACY IN HAITI

Mr. GRAHAM. Mr. President, I rise today to address the sad events in Haiti.

We have seen 4 months of fruitless diplomatic efforts to restore democracy to Haiti.

The thugs are still in power.

We are at a crossroads.

We essentially have two options at this point.

We can decide—even by indecision—to accept the illegal regime that overthrew democracy in Haiti.

We can decide to accommodate, to make a deal, to acquiesce to the status quo.

Or, we will send a message—along with our allies in the Organization of American States [OAS]—that overthrowing democracies is not tolerable.

Our President should lead our allies in sending that clear message.

In my right hand, I am holding a famous report from Amnesty International about human rights.

It's not about Haiti, but the intolerable conditions in Kuwait after Saddam's troops invaded.

This report—of human rights violations—had a profound impact on our foreign policy in the Persian Gulf.

December 21, 1990, President Bush told me so when he handed me a copy of this report.

The President said the contents of this report were part of the foundation of his decision to act in Kuwait.

According to this same group—Amnesty International—the current regime in Port-au-Prince is committing human rights violations that are as bad as the Iraqi violations in Kuwait.

I suggest that the report on Haiti should be read as thoroughly as was the report on Kuwait.

Mr. President, the courageous people of Haiti—the poorest people in this hemisphere—went to the polls and elected their leaders.

By any standard, this was a monumental event.

The people of Haiti had been brutalized by generations of dictators who suppressed freedom and raided the treasury.

So when the proud men and women of Haiti went to the polls—in a massive turnout—this transformation was an inspiration to the world.

But, last September, a coup led by thugs ousted the democratically elected Government of Haiti.

That is the root cause of the turmoil in Haiti.

There has been much focus on other issues that are symptoms: the embargo, the surge of boat people, the brutal violence.

We must not lose sight of the main issue—the fundamental challenge—which is to restore democracy.

It has been said that the eyes of the world are on Haiti, and that is true.

To analyze that statement in the context of world events, I would point out that Monday in nearby Venezuela there was an attempted military coup.

Yes, the eyes of the world are on Haiti.

Would-be military dictators all over this hemisphere are watching our reaction to the illegal chain of events in Haiti.

The enemies of democracy have been emboldened by the apparent success of the thugs in Haiti, and by our apparent inability to sustain the democratic Government.

For all those reasons, Mr. President, I urge our Government to send a clear message to the military thugs in Port-au-Prince. The international community cannot allow their actions to stand.

The administration is reportedly planning to ease the embargo against Haiti. I ask unanimous consent that articles from the February 5, 1992, Washington Post be made part of the RECORD.

This relaxation is seen by foreign diplomats and local observers in Haiti as a signal that Washington has given up hope of restoring democracy in that nation.

I agree. The easing of the embargo, without more, would send a signal of capitulation. Haiti could become the Munich of the Caribbean for its own struggle for democracy and for other similar fledgling democracies throughout the hemisphere.

The United States should reject this capitulation and take the following steps:

First, the President should prepare for the use of force to restore the legitimate—democratically elected—government to power.

That preparation should include:

Detailed negotiations with democratic governments in this hemisphere to build a multinational military coalition.

Initiate actions within the United Nations for a multinational peacekeeping force to assure Haitian stability after the legitimate Government has been restored.

When these preparations are complete—and with over 4 months since the coup this should be a matter of hours and days, not weeks—the democratic coalition should communicate in unequivocable terms that the thugs of Haiti will not stand. Their choice—immediate voluntary departure or forced removal.

Second, we must focus on the thugs. We should make life as difficult for them as we can. For example, if they have U.S. visas, we should cancel them. If they have assets in the United States, we should seize them. We should pressure our allies to do the same.

Our laws appear to be achieving their purpose of differentiating between political and economic refugees. Over the 4 months since the coup, approximately 35 percent of applicants have received permission to apply for asylum. In the last 3 weeks, roughly 80 percent have received permission.

Third, we must continue to uphold our laws. That means that those seeking asylum receive fair and thorough hearings. If their return to Haiti would endanger them, they should be allowed to apply for asylum in this country.

Fourth, the OAS should establish an on-the-ground tracking system to assure the safety of Haitians who do return.

Fifth, the President should direct the preparation of an economic plan detailing United States participation in the restoration of Haiti's economy after the legitimate Government has been restored.

Sixth, the OAS with United States leadership should support a restructuring of the Haitian military—to an organization consistent with civil-military relations and service to the people Haiti.

Mr. President, the Americas have diligently pursued a diplomatic resolution of the crisis in Haiti; 125 days later—these efforts have failed.

The choices today are clear—supinely acquiesce in a military coup which crushed a new democracy in the Western Hemisphere. If we elect this course, prepare to accept the consequences of capitulation: unrestrained violence, bloodshed, and death; flight in fear and desperation; crushing poverty; and a signal to the barracks coup plotters throughout this hemisphere that there are no serious sanctions for the overthrow of democracies.

The vast majority of Haitians have already demonstrated what they were prepared to sacrifice for the hope of a better life through democracy.

Now, it is ourselves who are being tested.

What is our resolve and willingness to act to sustain the principle that a government of the people, by the people and for the people shall not perish from this hemisphere?

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

[From Amnesty International, Jan. 1992]

HAITI: THE HUMAN RIGHTS TRAGEDY—HUMAN RIGHTS VIOLATIONS SINCE THE COUP

INTRODUCTION

On the night of 29 September 1991, a military coup overthrew the democratically elected government of Haiti. President Jean-Bertrand Aristide, an outspoken priest who had been elected in December 1990 with over 67% of the popular vote, was detained the following day. After negotiations between the military and the French, Venezuelan and US ambassadors, he was sent into exile in Venezuela. Brigadier-General Raoul Cédras, Commander-in-Chief of the Haitian Armed Forces, assumed temporary control of the country. On 9 October Supreme Court Judge Joseph Nerette was sworn in as Haiti's provisional president. Jean-Jacques Honorat, Executive Director of the Centre Haitien des Droits et Libertés Publiques (CHADEL), the Haitian Center for Human Rights, was designated by Provisional President Nerette on 11 October and ratified by the Chamber of Deputies as provisional Prime Minister of Haiti on 14 October.

The days immediately following the coup were marked by violent repression, particularly in the poor communities, where support for President Aristide had been strongest. Soldiers deliberately and indiscriminately opened fire into crowds, killing hundreds of people, including children. In one neighbourhood soldiers reportedly raided private homes and shot more than 30 unarmed people dead, then forced relatives and other local people to bury the bodies. Other human rights violations were widely reported, including torture and short-term arbitrary arrests without warrant, usually accompanied by severe beatings.

On 4 October Amnesty International wrote to Brigadier General Raoul Cédras, urging him to send clear instructions to the security forces to stop human rights violations, to open thorough investigations into those that had occurred since the coup and to bring the perpetrators to justice. (See—Haiti: Human Rights Violations in the Aftermath of the Coup d'Etat, October 1991, AI Index: AMR 36/09/91) No response was received.

Since October Amnesty International has continued to receive reports of grave and systematic human rights violations. Hundreds of people have been extrajudicially executed, or detained without warrant and tortured. Many others have been brutally beaten in the streets. Freedom of the press has been severely curtailed and property is being destroyed by members of the military and police forces or by civilians operating in conjunction with them. The military has systematically targeted President Aristide's political supporters, including members of the *Front National pour le Changement et la Démocratie* (FNCD), National Front for Change and Democracy; members of *Lavalas*,[1] the political grouping supporting the deposed President Aristide; residents of poorer areas of Port-au-Prince such as Carrefour Feuilles, Bolosse, Delmas, Bel Air and Cité Soleil; and those in the rural areas, where most of the people are believed to support Fr. Aristide. Grassroots organizations, which had flourished during the seven months of President Aristide's government, have been virtually eradicated, their equipment and premises destroyed, and most of their activists in hiding; women's groups, peasant development groups, trade unions, church groups and youth movements have all been the victims of severe repression. Even children have not been spared the violence in Haiti. An estimated 200,000 people have been forced into hiding. Since October tens of thousands of people have left Haiti, and more than 10,000 people have reportedly attempted to flee to the United States of America (USA) in flimsy and unseaworthy boats. Over 8,000 of them have been intercepted on the high seas by the US Coast Guard and have been taken to the US naval base in Guantánamo Bay, Cuba where their asylum claims are being assessed. Those not considered to have a valid asylum claim are liable to be returned to Haiti. Amnesty International believes that this procedure lacks certain essential safeguards which must be allowed to asylum-seekers and which are required by international standards.

The fate of many of those arrested has not been clarified and there continue to be widespread reports of torture. Many of those tortured have sustained serious injuries but have been refused medical attention in custody, and at least four people have reportedly been tortured to death. Some of those arrested arbitrarily have reportedly been released only after paying bribes to the soldiers. Families who go to the prisons and detention centres in search of their detained relatives have been intimidated by soldiers and many are afraid to visit their relatives. This may worsen the situation of many prisoners, as food is not always provided by the prison authorities and some prisoners get their only meals from visiting relatives or other inmates.

The return of *chefs de section*, rural police chiefs to military control has added to the climate of fear and repression. *Chefs de section*, notorious for widespread human rights violations in the countryside, had been disarmed and placed under civilian authority as *Agents de Police Communale* (Community police agents), during the administration of President Aristide. Amnesty International has received reports of grave human rights violations, including killings and beatings, perpetrated by former rural police chiefs who returned to authority after the coup.

On 17 December the *de facto* authorities issued a decree granting an amnesty for "all citizens who were arrested, persecuted, tried or convicted for political crimes during the period from 16 December 1990 to 27 September 1991" (*tous les citoyens qui ont été arrêtés, poursuivis, jugés ou condamnés pour délits ou crimes politiques durant la période allant du 16 décembre 1990 au 27 septembre 1991*). This included the 21 men convicted for the failed coup staged by Roger Lafontant in January 1991 with the aim of preventing President Aristide from taking power. The decree also provided for a further reduction in the sentence of Luc Désyr, a former secret police chief convicted in 1986 of torture and murder and sentenced to hard labour for life. His sentence had been reduced to 30 years in 1989, and now—reduced to five years—has expired. There is evidence that many of those covered by the amnesty, including two men convicted of human rights violations and jailed in mid-1991, were indeed released in the early days of the coup.

The restrictions on public freedom in place in Haiti since the coup have made it extremely difficult—often dangerous—to fully investigate reported human rights violations and no systematic, independent monitoring of human rights violations has been possible. Members of the Catholic Church, human rights groups, journalists and others involved in the collection and dissemination of information on human rights abuses have been threatened and intimidated by members of the security forces. Even where specific cases have been investigated and reported, it has not always been possible to acquire accurate follow-up information. Reliable information indicates that over 1,500 civilians have been killed, and the number of arrests reported to Amnesty International exceeds 300. But these figures could substantially underestimate the extent of the human rights crisis in Haiti: problems in communications and the climate of fear and repression have meant that many human rights violations remain unreported.

1. HUMAN RIGHTS VIOLATIONS AGAINST POLITICIANS AND SUPPORTERS OF PRESIDENT JEAN-BERTRAND ARISTIDE

President Aristide's landslide victory in the December 1990 elections was made possible by the deprived majority of the Haitian people—residents of poor areas in towns and cities and peasants in the countryside, and those in organizations working on their behalf. In the days immediately following the coup, those who openly opposed the military take over became the victims of severe repression. Hundreds of civilians were shot and wounded or killed in different sectors of Port-au-Prince, particularly in the poor districts. Some people were fired on by soldiers during demonstrations against the coup, others were shot in deliberate reprisals for attacks on military personnel. Hundreds of people were killed or wounded by military personnel shooting indiscriminately at everyone and everything that moved in the streets, including ambulances and the vehicles of doctors rushing to hospitals, thus preventing treatment of the wounded.

Repression intensified during the anniversary of the 16 December 1990 elections. According to information received by Amnesty International, the security forces raided areas where they believed there to be support for Fr. Aristide, and killings and arrests were reported throughout the country. Most of those arrested—many of them on charges of sticking up posters of Fr. Aristide—were severely beaten.

1.1 Killings

According to reports, at least 50 people were killed by the armed forces in Cité Soleil, Port-au-Prince, on the night of 30 September, and on 2 October soldiers shot and killed at least 30 people and wounded many more in the same area, apparently in reprisal for an earlier attack by a crowd on the local police post in which at least two policemen were killed. In another incident, approximately 30 to 40 people are reported to have been killed in the area of Lamentin 54, also reportedly in reprisal for the death of a soldier at the hands of an angry crowd. Reports have indicated that soldiers burst into many houses in the neighborhood and shot dead some of the inhabitants, forcing others to bury the dead. Among those killed in the incident, were a 17-year-old boy and an old man of 75.

Camille César, aged 52, Director of the Port-au-Prince cemetery, and Paul Camille Bazile, aged 50, who ran a community day care clinic in Carrefour, a poor district of Port-au-Prince, were reportedly detained, according to witnesses, by a passing military patrol on 2 October 1991. Both men were members of the *Front National pour le Changement et la Démocratie* (FNCD), National Front for Change and Democracy. Camille César, the son of a family targeted by the Duvalier family, had only returned to Haiti, after more than 25 years in exile in the United States, in order to support the candidacy of President Aristide. The arrests were carried out by seven to eight armed men, some in civilian clothes and some in uniform, between Carrefour and Delmas 18, on the outskirts of Port-au-Prince at around 11:00 am. Both men were taken away to an unknown destination. On 7 October relatives learned that their bullet-riddled bodies were at the morgue in Port-au-Prince, after staff at the morgue recognized Camille César and reportedly informed the family. However, by 9 October, when relatives went to the morgue to make arrangements for their funeral, the bodies of Camille César and Camille Bazile had reportedly been removed. It is believed that their bodies along with many other bodies, that had been taken to the morgue, may have been removed at the behest of the security forces and buried in mass graves.

Luckner Benjamin, aged 28, was reportedly shot by soldiers on 20 October 1991, as he was traveling on public transport from Cap Haitian to Léogâne. The vehicle was stopped by

[1] As a candidate President Jean-Bertrand Aristide campaigned under the slogan *Lavalas*—a creole word for landslide or flood.

soldiers in Carrefour, a poor district of Port-au-Prince, and passengers ordered to get out. The first passenger to alight was shot by the soldiers in front of his wife. Luckner Benjamin who was the second passenger to leave the vehicle was also shot with two bullets. The soldiers allowed the driver to take Luckner Benjamin to the General Hospital in Port-au-Prince, where he died from the gunshot wounds after undergoing surgery.

Orélus Céraphin (or Seraphin), a woodworker, was reported extrajudicially executed on the night of 31 October. Four soldiers reportedly entered his house, in the Christ Roi Street in Port-au-Prince and dragged him outside. He was then executed approximately 20 years from his house. His body was left outside until an ambulance came. It has been reported that his killing was in reprisal for his participation in the killing of a member of the *tantons macoutes* in January 1991.

On 15 December, the Deputy for Pignon (North Department), Astrel Charles, was killed by a former *chef de section*, who was reportedly arrested the next day. Astrel Charles was a member of the *Parti Agricole et Industriel National* (PAIN), National Agricultural and Industrial Party.

On the evening of 26 December, a tailor known as Amos was reportedly captured, and executed by three members of the military. According to the information made available to Amnesty International, his capture and execution followed a discussion he had with a friend on the return of President Aristide to Haiti, which was overhead by an army sergeant. Later, the same sergeant and two soldiers went to Amos' house looking for him. Amos was having a shower, and the military reportedly took him away just wearing a t-shirt. He was then reportedly taken to a field and told to run as each of the military shot at him. His body showed two bullet wounds on his head and one on his back.

Amnesty International has also received several testimonies indicating that the police have extrajudicially executed prisoners. The manner in which these executions have been carried out is reminiscent of the practices under the Duvalierist dictatorships.

On 12 November, soldiers beat and arrested at least 21 people after a mass given in memory of those killed since the coup by Father Antoine Adrien, a radical priest who has himself been the object of intimidation, in the church of St. Gérard in Port-au-Prince. Among them was a 13-year-old child, who was severely beaten and kicked. The prisoners were taken to the *Poste de Police, 4ème Compagnie* (4th Police Company), known as *Cafétéria*, in central Port-au-Prince, where they were again beaten. The child later said that during the night, the prisoners were taken in a vehicle to a place about one and one and a half hours' drive from the *Cafétéria*. All the prisoners were lined up against a wall for execution by firing. The child's life was spared in the last minute, but the other twenty were all killed. He was then taken back to the *Cafétéria* and again beaten. He was released after his mother reportedly agreed to pay officers $60.00.

On 29 November at approximately 4:00 pm a vehicle containing uniformed policemen entered the zone of Damien near Port-au-Prince. The vehicle reportedly stopped near some woods and witnesses reported that the police forced a man in plain clothes out of the car and shot him at point blank range. The police then got back in their vehicle and left. The same witnesses searched the body after the police had left and found the identity card belonging to Rénald Charles, born on 20 November 1949, and a resident of Port-au-Prince.

1.2 Torture and ill-treatment

Detainees are routinely subjected to torture and ill-treatment. At least four deaths as a result of torture have been reported to Amnesty International. There has also been numerous eye-witness reports of the security forces ill-treating or opening fire on unarmed civilians. Relatives of those being sought by the security forces have been beaten when soldiers could not find the people they were looking for.

Evans Paul, the mayor of Port-au-Prince under President Jean-Bertrand Aristide was arrested by approximately 20 soldiers on 7 October at the Maïs Gâté airport, in Port-au-Prince, where he had gone to meet diplomats from the Organization of American States (OAS). He was then scheduled to leave for Venezuela for talks with ousted President Jean-Bertrand Aristide. He was severely beaten with fists, military helmets and gun muzzles upon arrest and as he was being taken to the *Camp d' Application*, a military training school. However, when he arrived here officers prevented soldiers from continuing beating him. Several hours later, he was taken to the barracks in Pétionville, a wealthy Port-au-Prince suburb. He was reportedly ill-treated on the way there. Eventually, he was released that same night and has since then been in hiding. According to reports received by Amnesty International Evans Paul had, on the day of his arrest, received a personal assurance of safety from General Raoul Cédras, Commander-in-Chief of the armed forces, who led the military coup on 30 September 1991, and had been accompanied to the airport by guards provided by General Cédras.

As a result of the beatings, Evans Paul suffered fractured ribs and a back injury that has impaired his walking. He also sustained an eye injury which has damaged his vision, and a severe burn caused by a hot gun muzzle. However, due to the risk for his safety, he has not been able to have the necessary tests and obtain proper medical treatment in Haiti.

Evans Paul, a leader of the *Konfederasyon Inite Democratik* (KID), Confederation of Democratic Unity, which supported President Aristide in the December 1990 elections, has been a prominent opposition figure in previous regimes. He was imprisoned and ill-treated in 1980 under the dictatorship of Jean-Claude Duvalier and again arrested and severely ill-treated in November 1989 during the government of General Prosper Avril. The injuries he sustained on the second occasion, which included vertebral damage that impaired his walking, required treatment abroad. His house was attacked and severely damaged by soldiers in the first days of the coup.

On 8 October Chéneker Dominic, 19, reported he was severely beaten by soldiers when two army trucks with approximately 30 soldiers went looking for his father, a businessman and well-known supporter of President Aristide in the town of Jérémie, Department of Grande-Anse. As Chéneker Dominic refused to disclose his father's whereabouts, soldiers beat him repeatedly with a baton. He said he was unable to walk for a week as a result of the beating.

On 28 October, Ernst Charles, a long-standing supporter of President Aristide, was beaten up by uniformed members of the police. He was reportedly so badly beaten that he bled from his ears and his mouth. The beating stopped only when neighbours intervened. Ernst Charles was reportedly ordered to report to the *Cafétéria* police station, every three days.

Teacher Jean-Claude Museau, known as Klodi, 30, was arrested on 30 December and accused of sticking posters of President Aristide. He was severely beaten in different parts of the body, particularly on the head. His buttocks showed slash wounds. He was released on 6 January, after appearing before the *Parquet* (Public Prosecutor's office). However, on 8 January, he died apparently as a result of the severe treatment he had been subjected to. Jean-Claude Museau, who was also a student at the *Ecole Normale Supérieure*, Teacher's Training School, in Port-au-Prince, was married and had one child. He was also a member of a *Ti Komite Legliz*, base church community. According to the information available to Amnesty International, he was not given medical assistance, despite many appeals from relatives and others. It was reported that a member of the military replied to one such appeal by saying "we should have killed that one—he's giving us too much trouble" (*On aurait dû tuer celui-là; il nous donne trop de problèmes*). At least three more deaths have been reported as a result of torture.

1.3 Arbitrary or illegal arrests

Emmanuel ("Manno") Charlemagne, a well-known singer in Haiti and a staunch supporter of ousted President Jean-Bertrand Aristide, was arrested on 11 October 1991. According to information received from the family of Manno Charlemagne, he was arrested by uniformed soldiers who forcibly entered his home in Carrefour, a district of Port-au-Prince, without a warrant. Earlier, two lorry loads of soldiers had arrived in the area of Côte Plage in Carrefour and carried out several arrests. The soldiers then asked for Manno Charlemagne's home and went there. The soliders beat him in front of his family and took him away. Manno Charlemagne was accused of being a "criminal", of "possession of arms without the necessary permit" and of "incitement to violence". He was subsequently released on 18 October by order of the *Tribunal Civil* (Civil Court) of Port-au-Prince, which declared his arrest illegal.

However, as Manno Charlemagne was leaving the *Pénitencier National* (National Penitentiary) on the day of his release, accompanied by one of his lawyers, a group of men dressed in civilian clothes approached him. They said they had an order for his arrest, but when challenged to produce the written warrant, they refused to do so and brandished their weapons. Manno Charlemagne was then forced into a waiting vehicle and taken to an unknown destination. It was later learned that he was held in the National Penitentiary, and was eventually released on 25 October 1991. Manno Charlemagne went into hiding after his release and has now left the country.

On 15 October Antoine Izméry, a wealthy businessman who helped finance Fr. Aristide's presidential campaign, was arrested at his home in Port-au-Prince by over 70 members of the armed forces. He was reportedly beaten and taken away by the soldiers. It later emerged that he was being held without charge at the National Penitentiary in Port-au-Prince. He was, however, eventually charged with "inciting the public to riot" on 23 October. He had been brought before the *Commissaire du Gouvernement* (Public Prosecutor) for Port-au-Prince on four separate previous occasions, but the Public Prosecutor had failed to appear. He was eventually released on 25 October 1991. The following evening soldiers, reportedly includ-

ing several of those who arrested Antoine Izméry, raided the house of his brother, threatened the family, and ransacked the house. Antoine Izméry, who had been arrested and ill-treated in January 1990 during a serious clampdown on opposition figures by the government of General Prosper Avril, also went into hiding. In mid-December his name headed a *tonton macoute* death list broadcast by a pirate radio.

Rodrigue Jacques, 25, a worker with the state telephone company, Téléco, was reportedly taken away from his place of work on 21 October by four men in plain clothes carrying guns and army equipment. His family enquired at police stations and army installations, but all deny holding him and no news of his whereabouts have reportedly emerged. The names of 10 other people who were reportedly arrested in early October in different areas of the country and subsequently "disappeared" were made available to Amnesty International. This list included the name of Adonis Jean-Paul, a member of the *Comité Revolutionaire Chomeur Haitien*, Revolutionary Committee of the Unemployed Haitian).

Raymond Toussaint, a member of the *Comité National des Congrès des Mouvements Démocratiques* (KONAKOM), National Committee of Congress of Democratic Movements and of a rural development group known as CODEP, was arrested on 25 October 1991 and was reportedly ill-treated. According to information received by Amnesty International, Raymond Toussaint was arrested without a warrant by uniformed soldiers, who reportedly came to his home in Petite Rivière de l'Artibonite, Artibonite Department and accused him of "spreading propaganda in favour of President Aristide". Raymond Toussaint was taken to the army barracks in Petite Rivière, where he was reportedly severely beaten. He was subsequently transferred to Saint Marc prison, where he was said to be in poor health because of ill-treatment. He was allegedly denied access to his lawyer, visits by his family or medical treatment. He was released in late November 1991.

Solange Lafontant, the wife of René Préval, Prime Minister of President Aristide's government, was arrested by soldiers on the morning of 26 October. She was accused of possession of a fire-arm without the necessary permit (apparently her permit had expired). She was released later the same day. Prior to her arrest, her name had been announced over the government-controlled Radio Nationale among the list of those people ordered to report to armed forces headquarters in Port-au-Prince. René Préval has, since the coup taken refuge in a foreign embassy. Régine de Volcy, sister-in-law of former Minister of Public Works Frantz Vérella, was arrested on the morning of 6 December, but released the same day. On their own admission, soldiers told her that the army was using relatives of Frantz Vérella as a way to find him.

Up to 30 people were arrested by soldiers without warrant on Sunday 27 October in the Carrefour-Feuilles district of Port-au-Prince. Soldiers also forcibly entered and searched a day-care centre in the area. The same soldiers threatened parents if they did not send their children to school the following Monday. Many of those who oppose the coup have refused to obey the government's demands that children return to school from the beginning of November.

Serge Etienne, aged 35 and a former member of the armed forces, was arrested without a warrant by soldiers at his home on 27 October 1991. He was accused of incitement to riot on the day the coup took place, but the family believe he has been arrested because he is a *Lavalas* supporter. He was held at the *Service d'investigation et de recherches anti-gang*, (Anti-gang investigation and research service), where access to his relatives was severely restricted.

At approximately 10:00 pm on 15 November 1991, a military street patrol from the *Service de la circulation* (traffic division), surprised Adelin Télémaque as he was writing *"Viv Titid"* ("Long-live Titid"—Titid is a nickname for President Jean-Bertrand Aristide) on a wall in his neighbourhood of Delmas 6. The army shot at him and then followed him on foot when he ran away. They finally caught up with him and then beating him severely according to witnesses. He was then taken away. On 17 November, his parents made enquiries with the traffic division of the armed forces. They reportedly mocked the family and said that he was not being held there. The traffic division suggested the parents try the *Cafétéria* who denied holding him. When Adelin Télémaque's parents returned to the traffic division the officers there suggested they look for their son at the National Penitentiary, but the National Penitentiary also denied holding him. The parents returned again to the traffic division of the armed forces, who this time reportedly suggested that their son may have been executed and they should look for his body. Amnesty International is concerned that Adelin Télémaque may have been extrajudicially executed.

Also on 15 November, some 40 youths in Cité Soleil, a district of Port-au-Prince, were reportedly arrested by a group of uniformed military agents and men in civilian clothes. The youths were suspected of preparing to leave the country. They were beaten in full view of Cité Soleil residents and were forced to identify the houses of other youths who were thought to be getting ready to leave.

On Saturday, 30 November soldiers went to the home of Dr Margareth Dufour (*née* Degand), a medical surgeon, and her husband Christian Dufour, a French citizen, who is confined to bed following a serious accident. The soldiers were reportedly looking for Jean-Robert Sabalat, the Minister of Foreign Affairs under the government of President Jean-Bertrand Aristide, who is a neighbour and friend of Margareth Dufour. Jean-Robert Sabalat, whose house was searched without a warrant by soldiers in mid-October, has been in hiding since the coup. The soldiers were accompanied by a *Juge de Paix* (justice of the peace), and they reportedly declared that they found grenades and ammunition belonging to Jean-Robert Sabalat in Margareth Dufour's house. However, some reports have indicated that the soldiers brought the weapons into the house in order to incriminate Jean-Robert Sabalat. Since they could not find Jean-Robert Sabalat, the soldiers arrested Margareth Dufour, and reportedly accused her of harbouring him. Following her arrest, Jean-Robert Sabalat issued a statement denying possessing weapons. Margareth Dufour was taken to the Pétionville military barracks, but was later released.

Other officials reportedly arrested include Gérard Jules, the Justice of the Peace at Cayes-Jacmel, South-East Department, along with the FNCD mayor of the town and three others; Jocelyne Balonquet (also reported as Palenquet), a civil servant with the Ministry of Education; Donald D. Prosper, mayor of St-Marc, Artibonite, and his two deputies, and Fanovil Dornévil, a member of the Communal Assembly of the 5th Section of Bastien in Verrettes, Artibonite. Judge Milot was arrested in Limbé (North Department) for a short period, as was the Justice of the Peace for Arcahaie, Artibonite, Pierre Charles Douzé. Others included Carlo Jean Rateau and his brother Jean Richard Rateau, two artists and supporters of President Aristide.

Arrests were also reported in the days prior to the first anniversary of the December 1990 elections. In Carrefour Feuilles, for example, about 30 youth were reportedly arrested by soldiers. Their neighbourhood, as several others in Port-au-Prince, was "visited" by soldiers those days, in an apparent effort to intimidate any demonstration of support for President Aristide at the time of the election anniversary.

1.4 Threats and destruction of property

In the early days of the coup, armed soldiers forcibly entered and conducted searches without warrant on the homes of officials of the Government of President Aristide, including those of Prime Minister René Préval; Minister of Information Marie-Laurence Jocelyn Lassègue; Minister of Economy and Finance Marie-Michèle Rey; former Foreign Minister Marie Denise Fabien Jean-Louis and presidential advisor Claudette Werleigh. All of these officials went into hiding immediately after the coup took place.

In mid-October, the home of Max Montreuil, President of the *Comités de quartier du Cap-Haitien* (Neighbourhood Committees of Cap-Haitien), was attacked with gunfire, ransacked and set on fire. Max Montreuil has been a long-term target under previous military regimes. He was arrested in January 1990 and expelled to the Dominican Republic, when the government of President General Prosper Avril arrested scores of opposition figures and declared a state of siege. The home of Marc Antoine Noël, the Director of the *Fonds d'Aide Economique et Sociale* (FAES), Fund for Economic and Social Aid, was fired on by a group of soldiers, on the night of 12 October and two FAES cars were stolen by a group of 10 soldiers on the same occasion.

Amnesty International is also concerned at "hit lists" which are being broadcast or disclosed to the public, in an apparent effort to maintain the climate of fear and intimidation which is reigning among the population. On 1 November the High Command of the Armed Forces reportedly announced over *Radio Nationale* (National Radio), that they had uncovered a plot by "anarchists" intended to cause panic among the population of Haiti. A list of 45 people sought was read over the radio. The list included the private secretary of President Aristide, Henri Claude Ménard, trade union leaders, former Minister of Public Works Frants Vérella and other government officials.

On 15 December, a pirate radio station calling itself *Radio Volontaires de la Sécurité Nationale-57 (VSN-57)* broadcast a list of 96 individuals and some 200 organizations to be suppressed. Journalists; businessmen; political activists; government officials (including former Minister Vérella); radical priests; Bishop Willy Romélus of Jérémie, an active critic of the current authorities; and friends of President Aristide were included in the list. *VSN* are the initials of the disbanded *Volontaires de la Sécurité Nationale*, Volunteers for National Security, the official name of the notorious *tonton macoutes*. 1957 was the year in which François Duvalier came to power. In the broadcast, the speaker called on the *tonton macoutes* to mobilize

against supporters of President Aristide: "When you find them, [...], you should know what to do [...]. Go and do your job [...] crush them, eat them, drink their blood" ("*Il faut les trouver [...] afin de les écraser*". "*Quand vous les trouverez [...] vous saurez quoi faire avec eux [...]. Allez, faites votre travail [...] écrasez-les, mangez-les, buvez leur sang...*"). The list was later rebroadcast by the National Radio, in the guise of news coverage.

Since the appearance of the list, Amnesty International learned that the military attempted to arrest one of the individuals listed and that the house of another one was forced into by the military. He was not present at the time, but other residents of his home were reported beaten and furniture and other items were destroyed.

2. HUMAN RIGHTS VIOLATIONS AGAINST MEMBERS OF THE CLERGY AND RELIGIOUS ORGANIZATIONS

Members of the church who are real or perceived supporters of President Aristide are being targeted by the armed forces. More than 50 Roman Catholic priests reportedly went into hiding shortly after the coup. Lay Christian workers and members of church-sponsored development organizations are also at risk. At least eight priests, one nun and eight members of church groups have been arrested, and dozens more have been threatened and harassed by soldiers.

In the first days of the coup soldiers knocked with their rifle butts at the gate of the home of one priest working in a poor area of Port-au-Prince. He was not in and the soldiers began shooting in the air after they failed to gain access to the house.

Sénatus and Fritzner Nosther, both Christian activists and supporters of President Aristide, were arrested by members of the security forces on 4 October 1991 and taken to the *Caserne de Thiotte* (Thiotte military barracks), in the locality of Jacmel, Southeast Department. Both men were reportedly ill-treated.

The headquarters of the *Programme Regional d'Education et du Développement* (PRED), Regional Education and Development Programme, in Léon near Jérémie, department of Grande-Anse, were attacked on 19 October by a group of soldiers. Soldiers arrested Father Eddy Julien, a Roman Catholic priest and Director of PRED, who was accused of *incitation à la subversion* (inciting subversion). Eddy Pierre, a worker at PRED was also reportedly arrested. Both men were subsequently released without charge. During the attack, the soldiers damaged equipment and took away office machinery, including typewriters. On 18 October, the day prior to the attack, a letter reached Port-au-Prince in which Father Julien denounced threats he was receiving from members of the former *tonton macoutes* in Léon.

Jocelyn Lange, a member of a women's group, and Mrs. Jean Claude Avena and Mrs. Jean Baptiste Chèrazade, were arrested in late October reportedly because they were all members of a Christian Base Community in Limbé, North Department. All were released a day later.

Several priests and monks in the area of Les Cayes were reportedly being sought by the army in the wake of a general strike on 21 October. In Laborde, a district of Les Cayes, the presbytery of Father Lanpi was ransacked by soldiers. The Sacré Couer Christian brothers' house was also ransacked and brother Enold Clerismé arrested by soldiers and held for several days. In Dusis, the presbytery of Father Claudel Wagnac was searched and the priest himself arrested. He was released shortly afterwards.

Sister Loretta Philistin, director of the Catholic primary school in Ranquitte, North Department, was arrested on 8 November by the sergeant of the local police post. She was beaten and then released.

Foreign priests were subjected to arrest and ill-treatment. On 17 November, Father Julián travelled from his parish of Barahona in the Dominican Republic to Banane in the parish of Thiotte, in the locality of Jacmel, South-east Department of Haiti, in order to celebrate mass. As he was leaving the church in the company of Augustin (no surname given), the church sacristan, both men were arrested by members of the armed forces. The Bishop of Barahona in the Dominican Republic intervened and was able to obtain the release of Father Julián. Augustin however, was badly beaten and taken to the Thiotte military barracks.

On 18 November Father Jean-Claude Pascal Louis, the parish priest of Baron, near Saint Raphaël, North Department was arrested by members of the armed forces. He reportedly was arrested in connection with the closure of schools in the area. He was subsequently taken to the *caserne* (barracks) of Baron. He was released after the intervention of the Bishop of Cap-Haïtien, and subsequently went into hiding, fearing further reprisals by the armed forces. Other priests reportedly arrested include Father Danier Roussière of Gonaïves, Artibonite, Father Lexilien Pierre of Bas-Limbé, North Department, and Father Marc Fivez of Thomassique.

In addition, during the month of October, CARITAS, a foreign Catholic church agency, had several of its offices searched. In Dondon, North department, soldiers fired on the convent of a Canadian Roman Catholic order of St. Joseph de Vallières, which reportedly closed as a result.

In another incident a Roman Catholic priest, Father Cherry, from the diocese of Cap-Haïtien, North Department, was threatened by former *tontons macoutes*, who reportedly did not like the theme of the sermon given by the priest at the Sunday Mass. The theme was "*il est plus dificile à un riche d'entrer dans le royaume des cieux qu'à un chameau de passer dans le trou d'une aiguille*" ("it is more difficult for a rich man to enter heaven than it is for a camel to pass through the eye of a needle"). The priest subsequently went into hiding.

On Monday, 4 November, soldiers opened fire on the cathedral in Gonaïves, some of the bullets penetrating the cathedral, during a mass which was being concelebrated by the Bishop of Gonaïves, Monseigneur Emmanuel Constant, along with 10 other priests in honour of the patron saint of Gonaïves, Saint Charles. Several members of the armed forces in civilian clothes were inside the church during the mass and a group of armed soldiers in uniform were posted outside the church. As the mass finished the army opened fire. Cartridges were found inside the church. As the priests were leaving the cathedral, soldiers blocked their vehicles and accused them of preaching violence, and of belonging to the *Service de Sécurité de la Présidence* (SSP), Presidential security service, a personal security force set up under President Aristide and made up of civilian and military personnel. The armed forces had cited the creation of the SSP as one of the reasons why they had staged a coup. The armed forces arrested three young people, who were later released. During the arrest, one of the priests, Father Gérard, was jostled and abused. Nobody was injured in the incident. On 14 December soldiers allegedly looking for weapons searched the car and personal belongings of Bishop Emmanuel Constant.

At about 11:00 pm on 9 November the parish priest of Ballan, Father Marcel Boussel, of Belgian nationality, was going to Cap-Haitien to take a sick man to hospital when his car was followed and shot at by members of the armed forces. Neither Father Marcel nor the sick man were wounded in the attack. However, some hours later members of the armed forces went to the convent in Ballan looking for Father Marcel, who had by this time gone into hiding.

The tightening of repression in Mid-December was also felt by the Church. On the evening of 18 December a group of about 20 uninformed military and civilians armed with iron bars, picks and stones forcefully entered the presbytery of St-Gérard Church, in Carrefour Feuilles. They tried to get the priest out of the church, but he refused. The assailants told him they had been informed that a meeting was taking place inside, and that they wanted the attendants out as political meetings were forbidden. However, there was no meeting being held at the time there, and the men left after a while. However, a child found outside the church was taken and beaten.

3. REPRESSION IN THE COUNTRYSIDE

Despite difficulties in communications, there have been continuous reports of human rights violations in the rural areas. Most of the reports have come from the departments of the North, Centre, Artibonite and Grande-Anse. As in Port-au-Prince, human rights violations have included extrajudicial executions and arbitrary short-term arrests accompanied by torture and ill-treatment. Amnesty International has also noted with concern the rising numbers of incidents of ill-treatment and intimidation of the population by the security forces in the streets and in private homes. There have also been reports that violations have been committed by former *tonton macoutes* and former *Chefs de section*, rural police chiefs notorious for the abuses they committed against the rural poor under the Duvalier regimes and the regimes that followed. After President Aristide came to power, *chefs de section* were instructed to turn in their weapons and were placed under civilian authority as "*agents de police communale*". Some *chefs de section* well known for their violations of human rights were dismissed and others reportedly retired.

However, following the coup many *chefs de section* and their deputies returned to their former posts and have been reportedly responsible for many human rights abuses, including the extrajudicial execution of Senator Astrel Charles, the burning of the home of FNCD Deputy Jean Mandenave and the killing of two people and the arrest of 15 others in Rossignol, Artibonite reportedly constituents of FNCD Deputy Samuel Milord. Thirty houses were also reportedly burned in the occasion. Amnesty International also learned of the arrest of at least one rural police agent in late October or early November.

3.1 Killings in the countryside

On 2 October, seven people were reportedly shot and killed and seven others were wounded when soldiers opened fire on demonstrators marching in support of President Aristide, in the Artibonite town of Gonaives.

Frantz Moyiz, aged 26, unemployed, and Fred Chériska (alias T-Fred), aged 19, were both reportedly killed when the armed forces opened fire on the 2 October demonstration. Fred Chériska died on arrival at hospital. Elisyen Dazme, aged 33, and his cousin Jean-Pierre Dazme, aged 27, were also reportedly

shot and killed by soldiers. Elisyen and Jean-Pierre Dazme were on their way to the hospital on a motorcycle to enquire about the fate of Fred Chériska, when soldiers opened fire, killing them both. Line Joseph, aged 39, was killed early on the morning of 2 October, in the Détour Laborde district of Gonaives, while on his way to a nearby factory to look for a job, when soldiers opened fire indiscriminately. Navwa Odena, aged 35, was killed by soldiers, in the Trou-Sablé district of Gonaives. He was reportedly shot after being intercepted on the street by soldiers. Farilien Predestin, aged 33, was shot in unknown circumstances, also on 2 October. Gérard Janit, aged 34, died of a heart attack in the Pont-Gaudin district of Gonaives, after the military began opening fire in the area and one of his young brothers, Makenzy Janit, was threatened and reportedly violently beaten by the army.

In early October, in Marécage, Department of the Centre, over 10 people were killed when a group of over 1,000 supporters of the previous *chef de section* of Marécage, including armed civilian agents of the police, attacked the town residents. Over 26 houses were ransacked and their contents destroyed or stolen. Many of the surviving residents were forced to flee the area.

Régé Vorbé, age 45, was reportedly wounded by members of the armed forces on 19 October 1991 in the town of Petit-Goâve. He was subsequently taken to the hospital for treatment. The soldiers reportedly traced him to the hospital and killed him.

The climate of fear and repression being felt by the population is clearly shown by the report on the death of a young woman known as Antoune in Bonneau, North Department, on 18 December. Antoune, the mother of a 7-month old baby, was among a crowd celebrating the arrival of oil in Bonneau. However, a military informer told a soldier that the people were demonstrating in favour of President Aristide. The soldier immediately arrived on the spot and shot at the celebrators. Antoune was hit by a bullet and cried for help. The soldier, however, prevented anyone from assisting her, and allegedly threatened to shoot some nurses who wanted to help her.

3.2 Arbitrary arrest, torture and ill-treatment

In Saint Marc, Artibonite Department, seven people were reportedly arbitrarily arrested in the days immediately following the coup on 30 September 1991. One of those arrested, Sèn Siyis, was released nine days after being detained by soldiers. He had reportedly gone to the military to collect his bicycle, that had been taken from him by soldiers during the curfew imposed in the area. The local judge refused to intervene in the case and the military allegedly demanded $5,000 (One Haitian dollar is equivalent to 5.00 *gourdes*. The official rate for the US dollar is 7.00 *gourdes*) for his release. They finally agreed to accept $3,000 for his release. He was finally released on 7 October reportedly after paying $2,000, and has been given until 7 January 1992 to pay the remaining $1,000.

Seven people were wounded by gunfire when soldiers opened fire on 2 October on demonstrators marching in support of President Aristide in Gonaives. Among those people wounded were 11-year-old Garina Sainfort and 16-year-old William Pierre. Three other people wounded were aged 18. In Gonaives alone, 55 people were reported having been beaten by the security forces or by civilians acting apparently with their connivance in the period from 1 to 19 October. The victims include men, women and children. Soldiers reportedly beat victims with clubs, sticks, iron bars and the rifle butts. Several victims were hospitalized as a result of the beatings and blows received—many suffered fractures to limbs, including arms and legs and ribs. Several others received blows to the head, face and back. In one reported case a soldier beat a man, whose surname is Tazen, on the corner of Indépendence Street and Egalité Street in the district of Anba Pointe, Gonaives, after he found him listening to Radio "Voice of America".

Venès Cado, a resident of Marécage, was reportedly arrested between 9 and 11 October during the killings of over 10 people there. He was taken to the prison in Hinche, the capital of the Centre Department, where he was reportedly very badly tortured. He was subsequently released, but was reported to be seriously ill as a result of the torture he was subjected to.

In Jérémie, department of Grand-Anse, several people were reportedly arrested in the week of 14 October 1991. All were arrested allegedly for being in possession of clandestine newspapers, being circulated among the population as a result of the closure of many newspapers and radio stations. They were reportedly held at the prison in Jérémie.

Paul Laroche, a 33-year-old teacher of literacy was arrested by soldiers on the evening of 15 October 1991 in Port-au-Prince and taken to the *Service d'investigation et de recherches Anti-Gang*. He is reported to have been severely beaten and tortured and on 17 October was taken to the state hospital for treatment, bleeding from his right ear and sub-conjunctival hemorrhages in both eyes. The right side of his face and both buttocks were swollen from beatings and his abdomen was distended due to intestinal perforations sustained during torture. After five weeks in hospital, Paul Laroche was returned to the National Penitentiary in very poor health, where he was held until his release on 13 December. An international human rights delegation which visited Haiti in early December reported seeing Paul Laroche in very poor health, chained to his bed at the infirmary of the National Penitentiary. They reported that Paul Laroche was now deaf in his right ear as a result of the beatings he was subjected to, and had lost some visual capacity in his right eye. He was also said to be unable to walk unsupported.

Smith Joseph, aged 29, and a father of three children was reportedly arrested by a group of 6 soldiers in a white jeep, on 16 October in Gonaives, accused of speaking against the army. He was held for three days in prison, during which time he was beaten. He received blows to his right ear, his right eye and his left wrist. He was released without charge.

Eveillard Premilus, the communal police agent of Verrettes Artibonite Department, was arrested in late October by order the local military commander and sent to Saint-Marc prison. According to reports, the former rural *chef de section*, now returned to the area, had stated that Eveillard Premilus should be killed so that the dogs could eat his remains, because he had allowed people to demonstrate for the return of President Aristide.

Patrick Frantz Beauchard and his brother-in-law, Saurel Gomez, were arrested on Saturday 2 November 1991 in Hinche, in Haiti's Central Department, and were detained at the military barracks there. Patrick Beauchard was subsequently transferred to the National Penitentiary in Port-au-Prince but later released. No new information on the whereabouts of Saurel Gomez has been received. No information as to the reasons for their arrest was given by the authorities, and sources in Haiti believe they have been arrested solely on account of their support for deposed President Jean-Bertrand Aristide, or as a revenge against Patrick Beauchard's alleged earlier participation in a failed coup against President Avril.

Patrick Beauchard, a former sergeant in the Presidential Guard *Forces Armées d'Haiti* (FAd'H), Haitian Armed Forces, had supported the coup led by General Prosper Avril in September 1988. After the coup, however, he and a group of soldiers continued to make demands for radical changes both in the armed forces and in government administration, and were arrested a month later on the grounds that they were preparing a further coup. They were released without charges in December 1988 but were dismissed from the army. Patrick Beauchard and some of the soldiers arrested subsequently formed the *Organisation Populaire 17 Septembre* (OP-17), of which he became a leader. In December 1989 Patrick Beauchard was arrested a second time and accused of plotting against the security of the State. Another OP-17 leader, Marino Etienne, together with political opponent Evans Paul and trade unionist Jean-Auguste Meyzieux had been arrested one month earlier on the same charges. Upon arrest, the four men were severely ill-treated and required treatment abroad. The four were released as a result of an amnesty in February 1990.

Several arrests were reported in Hinche between 1 and 4 November. One of those arrested was Jaquelin Kebreru, a judge nominated by the government of President Aristide. The same judge worked with the Justice & Peace Commission of the Roman Catholic Church in Hinche. He was subsequently released.

At least four people were reportedly arrested by the Security forces in Darbonne, in the district of Léogane, West Department, during the week of 10 November. The arrests were carried out at night, without a warrant. None of those detained was reportedly brought before a tribunal. Relatives were refused access to the prisoners and those arrested were reportedly beaten by the security forces. In some cases the prisoners were released only when relatives have agreed to pay sums of money—in one case reported to the organization relatives were asked to pay $300. Many of those imprisoned were allegedly arrested after being identified by paid army informers as having allegedly been involved in the destruction of the police post in Darbonne on 30 September, the day the coup took place. These informers were reportedly paid for every person they identified.

François Destin, 24, a member of the Association of Youth for the Lithurgy, (Association des jeunes pour la liturgie) was reportedly arrested without a warrant on 10 November, as he was going to his field, in Ravine Achen, Artibonite. He remained in detention for a week in Verrettes, where he was tortured with the "djak" method, by which a baton is wedged under the thighs and over the arms of the victim who is then repeatedly beaten all over the body in different positions. On 17 November, he was transferred to St. Marc prison, and was released in early December.

On 15 November a group of armed civilians working in conjunction with the armed forces, reportedly arrested Leridor Simon and Anelo Paul in Marécage, Thomonde, in Centre department. Both men had been in

hiding since the reported killings in Marécage in October. Both men were reportedly beaten upon arrest. Ophlène Sortilus, was also reportedly arrested and beaten. She was subsequently released after she was forced to pay $50.

On 1 December, an old woman known as Dieula was reportedly arrested in the area of Charrier, first communal section of Verrettes, Artibonite Department. She had reportedly been watching the military go into the area several times looking for communal leaders and threatening and harassing the local population, and said: "When are all these things going to finish?" She was released the next day, against payment of a "large sum" of money.

On 15 December in Arcahaie, Artibonite, tens of people were reportedly arrested. Among those arrested were Justice of the Peace Pierre Charles Douzé and supporters of President Aristide. In one reported case, the military severely beat the aunt of one of those they were seeking, as he was not at his house when they arrived looking for him.

On 6 January Dieulemè Jean-Baptiste, 32, a KONAKOM militant and a member of the *Comité Central pour les Droits Humains et le Développement des Paysans*, Central Council for the Human Rights and Development of Peasants, was reportedly arrested in Liancourt, Artibonite. The reasons for his arrest were not disclosed. He was taken to the military barracks in Verrettes and reportedly severely tortured. His wife, Suzanna Janack, a member of the same committee, who was six months pregnant at the time of Dieulemè Jean-Baptiste's arrest and reportedly looked for by the military, went into hiding. Dieluenè Jean Baptiste was released two days later, and had to be hospitalized due to the severe treatment he was subjected to.

Also on 6 January, several people were reportedly beaten by soldiers in Bizoton, as a result of a dispute between a woman and a man courting her. Accounts of the incident indicated that the woman slapped the man in the face, ignoring that he was a soldier. The man then went to look for military reinforcement and went back to have his revenge. Soldiers sprayed with gunfire the house where they thought the woman had taken refuge, and coerced the local residents to disclose her whereabouts. Bizoton residents have reportedly been the object of severe intimidation by the local military, who have reportedly publicly stated that they are going to "finish with the local people" ("ils vont en finir avec les gens du coin").

4. HUMAN RIGHTS VIOLATIONS AGAINST JOURNALISTS

Since the beginning of the coup, the news media have been consistently targeted by the security forces. Despite public assurances that freedom of expression would be guaranteed, Amnesty International has learned of numerous incidents of journalists and others working in the Haitian news media being singled out as targets for human rights violations, including extrajudicial execution, arbitrary arrest and ill-treatment. On 30 September, many radio stations, which are the main sources of information in Haiti, were closed down or placed under military control. The offices and equipment of many of these stations were destroyed or damaged. Other stations simply stopped broadcasting because they feared reprisals from the security forces. Only those radio stations under government control are now permitted to broadcast inside the country. People found listening to foreign broadcasters, including Radio France Internationale; the Voice of America, which transmits in Creóle from the United States; and Radio Enriquillo, a Roman Catholic radio station operating from the Dominican Republic, have been arrested and beaten by the security forces. Journalists found in possession of clandestine information sheets, which are being disseminated throughout the country, were also targeted by the security forces. National and foreign correspondents have reportedly suffered intimidation by the security forces; many have had cameras, film or notes destroyed or confiscated, and some have been threatened.

Immediately following the coup several radio stations, includng *Radio Haiti International, Radio Cacique and Radio Caraibe* were attacked by soldiers in order to force them to stop broadcasting. Printing equipment was stolen, or destroyed. On Friday 4 October soldiers reportedly attacked *Radio Lumière*, and five staff members were wounded as a result of the attack. In Jérémie, Grand-Anse department, soldiers destroyed the radio transmitter belonging to the Tèt Ansanm (Heads Together) radio station (belonging to the Roman Catholic church). The staff of the station reported being threatened by soldiers.

Radio Nationale director Michel Favard was arrested by soldiers on 29 September, after a broadcast warning of the military coup. The soldiers burst into the radio, demanding to know the sources of Michel Favard's information. He was subsequently released.

Jacques Gary Siméon, known as Jacky Caraibe, a journalist and director of *Radio Caraibe*, was taken away on Monday 30 September, after a group of soldiers arrived at his home, severely beat him in the presence of his family, and took him away to an unknown destination. His dead body was later found in the Delmas 31 district of Port-au-Prince, bearing apparent marks of severe torture. According to information received by Amnesty International, his eyes had been gouged out and his teeth knocked in.

In the first weeks after the coup, Amnesty International also received reports that several newspaper vendors who were attempting to sell opposition newspapers were shot at by members of the armed forces in Port-au-Prince. It is not known if any were hurt. In Delmas 2, a district of Port-au-Prince, a group of 26 people were reportedly listening to the foreign radio station *Voice of America* when a group of soldiers fired on the group, killing three; many in the group were beaten, and several others arrested and severely beaten in custody. In the countryside, five people were reportedly beaten and arrested by soldiers in early October in Desdunes, Artibonite, after they were found listening to foreign radio stations. All the detainees were taken to the Saint Marc prison. At least one of the detainees, identified as Dieufaite Chérilus, was subsequently released.

Jean-Mario Paul, a journalist with the privately-owned *Radio Antilles Internationale* in Petit-Goâve, South-east department, was reportedly arrested in Port-au-Prince on 9 November 1991 by seven armed men in civilian clothes and a member of the police in uniform. Jean-Mario Paul was severely tortured in custody after being transferred from Port-au-Prince where he was arrested to Petit Goâve, South-east department. Soldiers put him in the "toad" position (*le crapaud*), in which a victim's neck is tied to his legs and he is beaten on the back and buttocks for long periods of time. On 10 December, over one month after his detention, he was reportedly transferred to Petit-Goâve Hospital as he was seriously ill and in need of urgent medical attention as a result of the torture he has been subjected to at the hands of the armed forces. However, on 16 December, he was returned to Petit-Goâve prison, allegedly for reasons of security. Jean-Mario Paul was readmitted to hospital over the Christmas period again in need of urgent medical attention. At the time of writing Jean-Mario Paul was once again back at Petit-Goâve prison and is reported to be in a stable physical condition.

Jean-Mario Paul has been charged with burning down a police precinct and a courthouse and "disarming" a policeman in Grand-Goâve, a town near Petit-Goâve. *Radio Antilles Internationale*, however, maintains that Jean-Mario Paul was, at the time of the incident, carrying out his legitimate work as a radio journalist. The home of Jean-Mario Paul in Petit Goâve had been attacked and burned in the wake of the coup on 30 September 1991. Jean-Mario Paul, a supporter of President Jean-Bertrand Aristide, had fled the area following the attack on his home, and had gone to Port-au-Prince.

Nicolas Sorenville from *Radio Nationale* (National Radio) was arrested, along with Marcel Beaublanc, a journalist with Radio Plus, in Mirebalais, Central department by soldiers on 8 November 1991. Both men were taken to the (military barracks) in Hinche, capital of Central department, but were subsequently released.

Claudy Vilmé, a photographer with the Haitian magazine *Haiti-Relais*, was reportedly arrested in mid-November 1991 by four men dressed in civilian clothes presumed to be soldiers, who forced him into their vehicle, which carried no license plates. He was beaten and threatened and asked for the address of journalist Clarence Renois of *Radio Métropole*. His photographic equipment was also destroyed by the men. He was released later that day.

On 10 December 1991 Félix Lamy, the Director of *Radio Galaxie*, was abducted when seven unidentified men who forcibly entered the radio premises, damaged equipment and took him away to an unknown destination after he broadcast a story filed days earlier by journalist Ives-Marie Chanel, who also works with the Inter Press Service Third World News Agency (IPS), about a possible rebellion within the armed forces. Both *Radio Galaxie* and *Radio Tropiques FM* used the story on their radios. The following day, the Assistant Director and two journalists from Tropiques FM were reported summoned to Police headquarters and questioned about the source of the broadcast. Ives-Marie Chanel went into hiding following reports that he was being sought by the army.

A delegation of Americas Watch, the National Coalition for Haitian Refugees and Physicians for Human Rights which visited Haiti in early December 1991, reported the names of other journalists arrested since the coup. The list included Hérald Gabliste and Jean-Pierre Louis of *Radio Antilles Internationale*; Lucianna Giani, an Italian freelance journalist; Frére Roday; Philiare from *Radio Cacique*; Miché Sully of *Radio Galaxie*; Fernand Billion of *Radio Soleil*; Masner Beauplan of *Collectif Kiseya* in Hinche, Central department; and Jean-Robert Philippe of *Voice of America*. Other journalists physically assaulted and threatened by the security forces include Thony Belizaire of *Agence France Presse*; Sony Bastien and Lilianne Pierre Paul of *Collectif Kiskeya*; Jean-Laurent Nelson of *Radio Plus* and a member of the Association of Haitian Jour-

nalists; Edwige Balutansky of *Reuters*, and Marcel Dandin of *Radio Haiti-Inter*.

5. HUMAN RIGHTS VIOLATIONS AGAINST TRADE UNIONISTS AND MEMBERS OF GRASSROOTS ORGANIZATIONS

Popular organizations have been particularly targeted for repression by the security forces and their civilian counterparts. These have included trades unions, grassroots and peasant organizations, women's groups and literacy organizations, all of which have been virtually paralyzed since the coup. Most of their members have been forced into hiding as a result of a systematic campaign of violence unleashed against them; others have been arrested and ill-treated. The offices of many such groups have been ransacked and their files and equipment looted or destroyed.

Uniformed members of the armed forces arrested various members of the *Association des Moniteurs d'Alphabetisation* (AMAP), Association of Literacy Teachers between 15 and 16 October in the districts of Carrefour Feuilles and Delmas, Port-au-Prince. Reports have also been received that members of *Kay Fanm*, a women's group, were also arrested in the Cité Soleil district of Port-au-Prince around the same time. Families have reportedly been denied on the whereabouts of their relatives. A few days later, members of the *Association des Mouvements d'Organisations Populaires* (AMOP), Association of Popular Organization Movements, were reportedly arrested in the Carrefour district of Port-au-Prince.

On 20 October 1991, Joseph Manucy Pierre, a leader of *Centrale Autonome des Travailleurs Haitiens* (CATH). Autonomous Centre of Haitian Workers, was arrested without a warrant at his home in Port-au-Prince by a group of soldiers, and accused of illegal possession of a firearm. Relatives report that his house was searched, but deny the accusation stating that nothing was found during the search. Joseph Manucy Pierre was held at the National Penitentiary, before being released without charge on 24 October.

At 5:00 am on 21 October 1991, Lutèce Marius and approximately ten other peasants were arrested in Bocozelle, Artibonite Department, by members of the armed forces. According to several peasants who managed to flee the area and avoid arrest, soldiers entered the house of Lutèce Marius and the homes of 10 others and took them away without a warrant. Lutèce Marius as well as the others arrested are all members of the *Groupe de Défense des Planteurs de l'Artibonite* (Planters' Defence Group of Artibonite), a peasant land reform pressure group. They are also supporters of President Jean-Bertrand Aristide. Approximate two weeks prior to his detention of 21 October, Lutèce Marius had been briefly detained.

Other peasant groups as well as grassroots organizations who were supporters of President Jean-Bertrand Aristide have reportedly been the object of harassment since the beginning of the coup. The offices of the *Mouvement Paysan de Papaye* (MPP), Papaye Peasant Movement were attacked and ransacked by soldiers. The MPP has been a long-term target of human rights violations by the armed forces under previous military regimes in Haiti. The leadership of the MPP has reported that soldiers from Hinche, capital of the Central Department, were drafted into Papaye to seek out the entire leadership of the MPP, including its president, Chavannes Jean-Baptiste, Vilga Jacques, Moy Alvarez, Jean Enihol Casimir. On 16 October MPP member Aldajuste Pierre, president of Kosmika, an MPP cooperative, was arrested by soldiers in Hinche. He was reportedly very badly beaten, and was subsequently transferred to the military hospital in Hinche, with blood in his urine. Another leader of the MPP, Dr. Dieudonne Jean Baptiste, the brother of MPP's president Chavannes Jean Baptiste, was arrested by police in Port-au-Prince on 17 December 1991. He was subsequently released. Ten days earlier soldiers had ransacked the home of Chavannes Jean Baptiste, only one week after the home of two Belgian *coopérants* (voluntary workers), working with the MPP, was also ransacked by soldiers.

On 15 November a group of over 30 soldiers searched the premises of the *Mouvement Paysan Soleil Leve* (Soleil Leve Peasant Movement) in Jérémie, Grand-Anse department. They said they were looking for arms. They returned the following day, 16 November and arrested Fleurant Robert, a leader and spokesperson for the Movement, which has publicly expressed its opposition to the coup.

Also in November, the House of Fadine Jeanty, a member of the peasant development organization *Tèt Kolle*, another long-term target or human rights violations, was ransacked on 10 November, She, as well as other members of *Tèt Kolle*, have reportedly gone into hiding.

Two trade unionists, Abel Pointdujour and Evans Fortuné, belonging to the *Syndicat d'Electricité d'Haiti* (Electrical Workers' Union of Haiti), were arrested on 17 December 1991 in Port-au-Prince, while trying to negotiate payment for electrical workers who had dismissed since the coup. They were subsequently released. Duckens Rafaël, the General Secretary of the Electrical Workers' Union has gong into hiding after his name appeared on a list of trade unionists and other grassroots leaders, reportedly being sought by the armed forces.

6. TARGETING OF HUMAN RIGHTS MONITORS

On 12 October, the house of human rights lawyer Jean-Claude Nord, Secretary General of the *Ligue des Droits de l'Homme*, (Human Rights League), was searched by members of the armed forces. Jean-Claude Nord was subsequently arrested and then released without an explanation.

Maria Térentia Dehoux, a human rights activist formerly working with CHADEL, whose Executive Director is the present Provisional Prime Minister of Haiti, Jean-Jacques Honorat, was arrested in Port-au-Prince on 30 October 1991. She was reportedly taken by soldiers to the National Penitentiary, where she was held for several hours, accused of belonging to an illegal political movement. She was, however, released without charge the same day. Maria Térentia Dehoux had been wounded in September 1988 during an attack on the parish church of President Artistide in Saint Jean Bosco, a poor area in Port-au-Prince.

Virginie Sénatus, responsible for the *section féminine* (women's section) of the *Centre Lafontant Joseph de Promotion des Droits Humains* (Lafontant Joseph Centre for the Promotion of Human Rights), was arrested during a student gathering at the *Université d'Etat d'Haiti* (Haiti State University) in Port-au-Prince on 12 November 1991. She was subsequently released. (See Section 7, Human rights violations against students).

On the evening of 12 November, armed civilians and uniformed members of the armed forces went to the home of the head of Publications of the Joseph Lafontant Centre for the Promotion of Human Rights, Loby Gratia, enquiring about his whereabouts and the whereabouts of Raynand Pierre, the Executive Director as well as other members of the Centre. According to his wife, who answered the door, the men had a list of people they were looking for. Neither of those sought were at the house and those looking for them left, only to return the following morning, 13 November. Raynand Pierre reported to Amnesty International that he had been warned by friends the week before not to go out on the street too frequently. The Centre Lafontant Joseph for the Promotion of Human Rights has been very active in denouncing the wide ranging human rights violations that have occurred in Haiti since the military coup. He and other members of the Centre Lafontant Joseph went into hiding after the incidents of 12 and 13 November.

Amnesty International also learned that the offices of the *Centre Oecuménique des Droits de l'Homme*, (Ecumenical Centre for Human Rights) were ransacked on the night of 18 November.

7. HUMAN RIGHTS VIOLATIONS AGAINST STUDENTS

On 12 November, students belonging to the *Fédération Nationale des Etudiants Haitiens* (FENEH), National Federation of Haitian Students, gathered at the university campus outside the Faculty of Science of the State University of Haiti, for a meeting, a press conference and to demonstrate support of the return of President Jean-Bertrand Aristide. As they were chanting slogans and clapping hands, joined by local residents, troops stormed into the campus, beating students and chasing foreign journalists away.

Many students ran for safety into the Faculty of Science building. Eyewitnesses have stated that uniformed and armed civilians then started throwing stones at the building before they broke in, reportedly causing severe damage to university facilities and equipment. The students inside were reportedly brutally beaten with batons and rifle butts. Well over 100 students were subsequently arrested, along with several journalists, including an Italian journalist, Lucianna Gianni.

Military trucks reportedly took a group of the arrested students and journalists to the *Service d'Investigation et de recherches Anti-Gang*, while another group, numbering approximately 50, was taken to the National Penitentiary. Those students held at the Anti-Gang Investigation Service were also later taken to the National Penitentiary. The journalists were reportedly released shortly after arrest, as were apparently some of the students. According to the testimony given to a foreign delegation[2] by several students held at the National Penitentiary, they were questioned by the wife of de facto Prime Minister Jean-Jacques Honorat, who runs a prison visiting service, CAPOC, and promised they would be released if they agreed to give statements for her radio program that they had not been ill-treated. The students were not, however, reportedly allowed visits by family or lawyers.

On 14 November the *doyen* (president) of Port-au-Prince civil court declared the students' arrest illegal and ordered their immediate release. However, police at the Anti-Gang Investigation service refused to release them saying that it was up to the police to release the students, since it was them who had arrested the students. Most of the students were released from one to two weeks later. However, according to reports, some 30

[2] See *Return to the Darkest Days—Human Rights in Haiti since the coup*, by Americas Watch, National Coalition for Haitian Refugees and Physicians for Human Rights, December 1991, p. 9.

students still remained in detention by mid-January.

One student released reported being beaten with batons by a cordon of soldiers on entering the *Service d'Investigation et de recherches Anti-Gang*. *"A l'Anti-Gang, deux rangées de militaires nous attendaient; ils nos ont frappés avec des bâtons, sur les dos, le thorax, les reins et le visage. . . J'ai reçu 3 coups depoing . . ."* ("At Anti-gang, two lines of soldiers were waiting for us; they beat us with their batons on the back, thorax, kidneys and face. . . I received three punches . . .") The same student said that on arrival at the National Penitentiary they were again forced to go through lines of soldiers *"il y avait encore deux rangées d'hommes qui étaient là pour nous frapper, alors qu'un autre nous maintenait par le collet et nous forçait à avancer lentement afin que nous puissions recevoir plus de coups. A ce moment, j'ai failli perdre connaissance tellement on m'avait frappé."* ("there were still two lines of soldiers who were there to beat us, as well as a third to hold us by the collar to force us to proceed more slowly, so that we would receive more blows. At that moment I lost consciousness, I was beaten so badly.") A female student had her arm broken as a result of beatings she received.

Another student held prisoner at the National Penitentiary reported being singled out for beating by a soldier who beat him about his stomach and his head. His left eye was reportedly injured, as was his jaw. Released students reported that the physical condition of some of their fellow students was worse than their own, some of them having infected wounds. The students did not receive any care during the nine days they were in detention.

8. CHILDREN AS VICTIMS OF WIDESPREAD ABUSE

Children have not been spared the violence that followed the coup and they can be counted among the hundreds of victims of extrajudicial execution, arbitrary arrests and ill-treatment. At least 25 children have been arrested since 30 September, and there have been numerous reports of children having been beaten by the security forces on the look out for their relatives or others. Institutions working on behalf of street children have also been targeted.

On 1 October, 17-year-old Jacques Séus Jean-Gilles was reportedly killed and five other people wounded in an attack by the security forces on the premises of Father Aristide's orphanage for street boys, *Lafanmi Selavi*. Another 17-year-old child, was reported killed on 2 October together with over 30 others, in Lamentin 54. On 30 November, five-year-old Farah Michel was reportedly extrajudicially executed by a police officer in the Cité Soleil district of Port-au-Prince.

On 2 November, 16-year-old Napoléon Saint Fleur, unable to prevent some military agents from ill-treating his mother in Cap Haitien, shouted *"A bas l'armée! Vive Aristide!"* ("Down with the Army! Long Live Aristide!"). The military reportedly beat him severely, and took him away. Prisoners released from Cap Haitien prison reported the case of a youth who was severely tortured, and human rights workers feared it could have been Napoléon Saint Fleur.

Two girls were also arrested with the over 100 students arrested on 12 November in Port-au-Prince. Fourteen-year-old Mama and 16-year-old Marjorie Garre were arrested, severely ill-treated and held for several days at the National Penitentiary in Port-au-Prince. Also on 12 November, a 13-year-old boy was arrested with 20 adults after a mass in the memory of the victims of the repression following the coup outside the church of St-Gérard in Port-au-Prince. The child was severely beaten by policemen from the 4th Police Company, and he was saved from execution by shooting only after he had been lined up against a wall with the other 20, who were all killed. The child was taken back to the police station, where he was beaten again, and only released after his mother agreed to pay $60.00. Another young boy was reportedly beaten outside St-Gérard church on 18 December after a group of about 20 uniformed military and civilians forcefully entered the presbytery of St-Gérard and tried unsuccessfully to get the priest out of the church.

On 24 November, Judith Larochelle, 14, was reportedly arrested in Port-au-Prince near the quai where boats leave for Jérémie. She was arrested as soldiers were looking for her cousin, whom the army had accused of stealing $15.00, and whom they could not find.

In late November, the premises of the *Centre d'Education Populaire* (CEP), Centre for Popular Education, an organization that provides for street children and youths, was ransacked and much of its equipment destroyed. A young boy was arrested in Pignon, North Department, in early December, reportedly because he stopped to look at a picture of President Aristide on a church wall. He was surprised by soldiers who told him off for looking at the picture, and then accused him of sticking it himself. The child was severely beaten, as the military tried to force him to take the picture off, which the child could not do because he was too small to reach it. He was eventually released after several hours in prison.

In mid-December, Amnesty International learned that about 20 street boys aged between 10 and 15 years were being detained at the National Penitentiary among the adult population. They had reportedly been arrested by the security forces because they were "children of Aristide", meaning that they belonged or that they were thought to belong to *Lafanmi Selavi*. Prison conditions at the National Penitentiary have for years been extremely hard, and many inmates have been in ill-health as a result of malnutrition, poor hygiene and lack of medical treatment. In the past three months, conditions at the National Penitentiary have reportedly deteriorated even further.

Around that same time, a soldier entered the house of a woman in her 60s in Bolosse-Martissant, Port-au-Prince. The woman was getting ready to leave for the provinces with her daughters and granddaughters, her family having been the object of repression since 30 September. As the woman was not present at the time, the soldier beat the young girls and searched the house, claiming that he was looking for the woman's son. As the woman was going back to the house, she saw the soldier in the house and ran away. The soldier followed her and beat her badly. She reportedly was bleeding profusely from the face. The soldier then dragged her on the street. He reportedly let her go only after the local people collected $20.00 and gave them to him. Other reports of children beaten by soldiers have been received by Amnesty International.

9. WOMEN

Amnesty International has also learned that several young women, one as young as 14, were raped by the military, particularly in the first days of the coup. According to local human rights groups, most of the rapes have not been reported, and that even in reported cases the victims have requested their identities to be kept secret. According to press reports, several Dominican women working at a bar in Port-au-Prince said in a television interview in Dominican TV that they had been raped and beaten by soldiers. One of the women, who identified herself as Milly Felipe Hernández, said she had been gang-raped by 15 soldiers, and that she watched as her friend was killed when she tried to telephone relatives for help. The women were reportedly escorted back to the Dominican Republic by Dominican diplomats.

10. SITUATION OF HAITIAN ASYLUM-SEEKERS

Since the coup of 30 September 1991, thousands of people have fled from Haiti. It is estimated that tens of thousands have gone overland to neighboring Dominican Republic. Others have left the country by boat, some 1,500 landing in Cuba, but many more apparently intending to seek protection in the United States. By the end of 1991, over 8,000 Haitian asylum-seekers have been intercepted by US Coast Guard ships before reaching US territorial waters. In November the US Government asked other countries in Latin America and the Caribbean to accept Haitian asylum-seekers, and Honduras, Venezuela, Belize, and Trinidad and Tobago each agreed to grant some temporary refuge to some of the asylum-seekers. The others who have been intercepted by US Coast Guard ships are interviewed by the US authorities to assess whether they are likely to have a claim for asylum in the US.

On 18–19 November the US authorities returned over 500 asylum-seekers against their will to Haiti. In a statement on 18 November the US State Department announced that only those who may be able to qualify for asylum would be allowed to proceed to the US to lodge an asylum claim, and that about 50 such people had so far been identified; the others, apart from those who had been granted temporary refuge by other countries in the region, would be returned to Haiti. The statement added that the US Government did not believe the asylum-seekers sent back to Haiti would face persecution there. On 19 November a Federal Court in Miami issued an order temporarily prohibiting the US authorities from returning any more asylum-seekers to Haiti pending further examination of the issue. The US Government appealed the decision, but a series of court rulings further prevented the US Government from forcibly returning any Haitian asylum-seekers who have been intercepted at sea. The government's appeal against these rulings was apparently due to be heard on 22 January 1992. Depending on the outcome of the hearing, the US authorities may start returning the Haitian asylum-seekers immediately. Over 1,600 of the Haitians intercepted by the US authorities have been "screened in"and will allowed to proceed to the US to lodge an asylum claim. However, Amnesty International is concerned that the US authorities have not given Haitian asylum-seekers a full and fair examination of their reasons for fearing to return there, and that therefore those returned could include many people who would be at risk of serious human rights violations in Haiti.

Article 33 of the United Nations Convention relating to the Status of Refugees, which is binding on the US, prohibits *refoulement*—the forcible return of any person to a country where they risk serious human rights violations. In order to ensure that such people are property identified and given effective protection from such forcible return, it is essential that the US Government grants all asylum-seekers access to a full and fair procedure for determining the merits of their asylum claims. Amnesty

International is concerned that the US Government has not given any such opportunity to the Haitian asylum-seekers currently wishing to seek protection in the United States. They are "screened" as Guantanámo, the US naval base in Cuba, in order to ascertain whether they are likely to have a claim for asylum and so may be allowed to proceed to the United States to lodge their asylum claim; others are liable to be returned to Haiti. But this screening procedure lacks certain essential safeguards which must be allowed to asylum-seekers and which are required by international standards. These essential safeguards include the right of every asylum-seeker to appropriate legal advice and, if their application for asylum is rejected, the right to have an effective review of their case before being expelled from the country where they seek asylum.

Since September 1981 a bilateral agreement between the governments of the US and Haiti has permitted the US authorities to intercept outside territorial waters those Haitians travelling to the US and to return them to Haiti. The US Government contends that under this arrangement no one is sent back who may have a legitimate claim to refugee status. However, of the more than 20,000 Haitians interviewed at sea in the ten years from September 1981 to September 1991, only about 30 were permitted entry to the US to pursue their asylum claim.

The US State Department maintains that the asylum-seekers sent back to Haiti would not face persecution there, and that "there is no indication that persons returned by the US under the interdiction programme are detained or subject to punishment". However, Amnesty International is seriously concerned that those who have tried to leave the country following the coup could be perceived as government opponents and, as such, become targets for abuses perpetrated by the security forces and armed civilians acting with them. Indeed, in past years, Amnesty International knew of several cases where asylum-seekers who had been refused asylum in the United States and returned to Haiti were imprisoned and in some cases ill-treated on their return, and has evidence that many Haitians deported from the US after having completed criminal sentences there have been imprisoned in Haiti for months without any legal basis for their detention. Amnesty International therefore believes that large numbers of those who have fled Haiti in recent weeks could indeed be at risk of serious human rights violations if returned there.

Amnesty International's concern on this point is heightened by a report that on the morning of 15 November 1991 a group of Haitian military officers, some uniformed and some in plain clothes, arrested several young men in the poor district of Cite Soleil, in Port-au-Prince, whom they suspected of preparing to leave the country. The youths were reportedly severely beaten in full view of Cité Soleil residents and were forced to identify the houses of other youths who were thought to be getting ready to leave. About 40 youths were taken away, and their current whereabouts are not known. In late December a group of people preparing to board a "canter" (one of the vessels in which Haitians undertake the sea journey to the US) were severely beaten and some were arrested in Montrouis, Artibonite department.

Amnesty International has been unable to assess the present situation of those asylum-seekers that have returned to Haiti. It has been reported that they are being placed under the care of the Haitian Red Cross upon arrival, and from there sent back to their villages. However, difficulties in communication—most of the refugees come from La Gonáve island or areas in the North-West where communication has been the most difficult—and information gathering, and the ongoing repression in the countryside, no news has emerged as to their present situation and Amnesty International is concerned that it may be virtually impossible to monitor their situation. However, Amnesty International views with concern the report that 73 Haitians returned reportedly voluntarily from Venezuela on 3 December were thoroughly questioned and searched. They were reportedly taken to the police headquarters, where they were fingerprinted and photographed.

In late December Amnesty International requested permission to visit the base at Guantánamo to interview Haitian asylum-seekers and to assess the screening procedures used there, but the request was refused by the US authorities. At the time of writing, the organization was awaiting a reply to its request for reconsideration of the refusal.

[From the Washington Post, Feb. 5, 1992]

U.S. PLANS TO EASE EMBARGO ON HAITI—OAS CHIEF EXPRESSES CAUTION

(By Al Kamen and John M. Goshko)

The Bush administration said yesterday it plans to ease the trade embargo against Haiti, taking pains to portray the move as neither breaking ranks with the hemisphere's other democracies nor undermining efforts to restore civilian rule to Haiti.

Nevertheless, diplomatic sources and some U.S. officials said that Joao Baena Soares, secretary general of the 34-nation Organization of American States, was not happy about the U.S. decision. The OAS voted the embargo last fall after Haitian president Jean-Bertrand Aristide was ousted in a military coup.

In Haiti, diplomats and local observers said the move almost surely will be seen as a signal that the United States has given up hope of restoring democracy there.

Senior U.S. officials said last night that after U.S. Ambassador Luigi Einaudi reported to the OAS Council, Baena Soares expressed understanding for the U.S. position.

However, in a telephone interview, the secretary general took a cautious and equivocal attitude. "The [embargo] resolution is an exhortation to the members, and it is up to the members to decide unilaterally if they will implement it," he said.

"Therefore, I will not comment on any measures or any position taken by the U.S. government," he said. But he added: "To change the multilateral recommendation, in my view, we should have some real progress in the implementation of the resolutions [imposing the embargo and calling for Aristide's restoration]." Asked if that implied disapproval of the U.S. move, he said, "I will not comment further."

State Department officials said the U.S. action is only what they called "a fine-tuning" of the embargo and is aimed at relieving hardships on Haiti's impoverished workers.

Department spokesman Margaret Tutwiler said the embargo would be lifted selectively on U.S.-owned assembly plants, which put together such items as baseballs and handbags and which employed about 40,000 people before the Sept. 30 coup. How many are attempting to do business now is unclear.

The decision to lift the embargo on "assembly" industries has been under consideration for some time, U.S. officials said, because of concern that it is harming poor workers, fueling the exodus of Haitian boat people trying to get to the United States and having no effect on the island republic's military rulers.

But some OAS diplomatic sources and refugee advocates said they feared the decision would be seen as U.S. acceptance of the military junta and would make it harder for the OAS to negotiate a compromise that restores Aristide to office.

"As the major influence in Haitian politics, the United States is simply sending the wrong signal to the Haitian military," said Jocelyn McCalla, director of the National Coalition for Haitian Refugees in New York.

U.S. officials said the decision was what Tutwiler called a "retargetting" or "fine-tuning" of the embargo, not a weakening. She noted the administration is still trying to identify individual Haitians who may be assisting the coup so that U.S. measures may be used to pressure them directly—such as by blocking their assets in the United States and prohibiting U.S. citizens from financial dealings with them.

"It was never our intention to destroy the Haitian economy," a State Department official said. "And this is not a case of our being at the beck-and-call of American companies. They made their opposition [to the embargo] known from the very beginning and if that had been the detemining factor, we would not have had an embargo in the first place."

Support for the administration's move came from Rep. Robert G. Torricelli (D-N.J.), chairman of the House subcommittee on Western Hemisphere affairs. In a letter to the State Department, Torricelli called for continued efforts to restore Haitian democracy, but he added: "The embargo has outlived its usefulness. It's time to end it."

The OAS embargo, approved with strong U.S. support, was seen as an important test of hemispheric unity in favor of democracy. The OAS, long considered by U.S. critics as an ineffectual debating society, seemed to be coming into its own as an important institution in hemispheric diplomacy.

On Nov. 5, President Bush signed an order imposing the embargo against "all commercial trade with Haiti, both exports and imports of goods and services." It exempted items for humanitarian purposes such as basic food staples and essential medicines.

More than 15,000 Haitians fleeing the island by sea have been intercepted by the Coast Guard since late October. About 12,000 of them are on cutters or at a tent city at the U.S. naval base at Guantanamo Bay, Cuba. The makeshift camp was erected over strong administration objections after refugee advocates obtained a court order barring forced repatriation of the boat people to Haiti. The administration argued that most of the boat people were fleeing Haiti's economic conditions and were not political refugees fearing for their lives.

The Coast Guard began returning Haitians Saturday, just hours after the Supreme Court lifted the order.

House Speaker Thomas S. Foley (D-Wash.) expressed concern about the refugees and said the House may consider a resolution on the issue.

Rep. David E. Bonior (D-Mich.), the House majority whip, condemned the repatriations, describing them as "outrageous" and motivated by the Bush administration's fear of a political backlash in Florida, where the refugees hoped to settle.

On the House floor, Rep. Major R. Owens (D-N.Y.) called the repatriations "a racist act with deadly genocidal" consequences and

called for alternative policies more "just and merciful and in the tradition of the American people."

[From the Washington Post, Feb. 5, 1991]

FOR HAITI'S RULERS, A KEY SIGNAL

(By Lee Hockstader)

PORT-AU-PRINCE, Haiti, February 4.—The planned easing of the U.S. trade embargo against Haiti, which may or may not help revive the country's crippled economy, will likely be received here as a signal that Washington has given up hope of restoring democracy in this impoverished Caribbean nation, according to foreign diplomats and local observers.

Several analysts said that the military leaders and civilian backers of the Sept. 30 coup that ousted president Jean-Bertrand Aristide would celebrate a great victory, interpreting Washington's planned move as a lack of resolve.

"It's going to send the wrong signal," a Haitian economist said. The strategy of Haiti's new leaders "all along has been: 'We can wait out the [United States]. Give them enough time, and they'll get tired.'"

U.S. officials insisted that the easing of the embargo will simply be a "re-targeting" meant to exert pressure on those most closely involved with the coup. But they acknowledged that the move would be seen in Haiti as weakness or capitulation.

"It'll be seen at best as a mixed signal, I suspect," one State Department official said. "The media in Haiti, which is controlled, will certainly [present] it like that."

A Latin American diplomat said that the head of the Organization of American States, Secretary General Joao Baena Soares, had argued strongly with the State Department, urging that the United States hang tough with the embargo. "This is not positive. It's not going to help," he said about the easing of the sanctions.

U.S. officials countered that the relaxation might revive stalled negotiations on Aristide's return by offering a carrot in place of the stick that has been applied so far. Some reacted bitterly to the Latin American position, noting that only the United States—not any Latin country—had significant levels of trade with Haiti or was forced to deal with the flow of boat people in the wake of the coup.

"It's easy for the Argentines to say we should toughen the embargo or call for a blockade," a U.S. envoy said. "But they're not going to do it, and their trade's not going to be affected. . . . It's an American problem."

The plan to relax the embargo was greeted enthusiastically by assembly plant owners whose businesses had been shut down or drastically reduced by the embargo. An estimated 100,000 people have lost their jobs since Washington imposed the tough embargo last fall—nearly half of them in assembly plants that export to the United States.

"The embargo is doing wrong to the wrong people," said Jean-Bernard Faubert, who runs a crafts business that has laid off half of its 1,200 workers in two months.

The State Department said the main effect of the embargo has been to hurt poor workers at such plants while leaving the plotters of the coup largely unscathed. Nevertheless, many of the workers most directly affected by the sanctions have applauded them as the best way to promote the return of Aristide, a radical Roman Catholic priest who was elected largely with the support of Haiti's poor.

There was considerable doubt here about whether Washington's plan would achieve the stated goal of rescuing the assembly plants. A number of the plants—which turn raw materials shipped from the United States into clothing, electronic goods and other wares for export—already have closed permanently or transferred operations to the Dominican Republic, Honduras or other countries.

Seven of 44 assembly plants listed by the Haitian Association of Industry have closed permanently, according to association figures, and 32 have laid off most or all of their workers and closed for the time being.

Moreover, the embargo has reinforced Haiti's image among business people as an unreliable base for manufacturing and investment, analysts said, and it is unclear whether that image can be changed.

"You're not going to get anybody who pulled out to come back," the economist said. "Who are they going to export to? Who's going to want to give them contracts?"

The State Department's decision followed complaints from American companies that relied on Haiti as a source of cheap labor to produce apparel and electronics items. Scores of wholesalers in the United States called and wrote to members of Congress and the administration, saying that their businesses would be devastated if the embargo remained in place.

Doug Williams, president of Country Original of Jackson, Miss., wrote to a Treasury Department official that his company was "slowly going down the tubes due to this embargo." He noted that his firm, which imports more than $1 million in handicrafts from Haiti annually, had printed a catalogue—at a cost of $40,000—just before the embargo was imposed.

The catalogue "is not any good if we have no products to ship to our customers," Williams wrote.

The PRESIDING OFFICER. Under the previous order, the Senator from New Hampshire is recognized to speak for up to 5 minutes.

Mr. SMITH. I thank the Chair.

AN ECONOMIC AGENDA

Mr. SMITH. Mr. President, yesterday afternoon Senators were treated to a heavy dose of economic revisionism and finger-pointing on the floor of the Senate. One Senator mistakenly stated that the President has waited 3 years to submit an economic plan to Congress. I do not know where that Senator was for the past 3 years, but President Bush submitted his first budget to Congress only a month after taking office, and that budget included, among other things, a capital gains tax cut, a line-item veto, and a balanced budget amendment. The President's economic plan was referred to as "phony," and "favoring the rich."

First, I would like to commend President Bush for his bold job-creating agenda. It is no secret that the Democrats have a majority in the House and the Senate. Where is their plan? If they have a plan, why do they not submit it to the President, to the body? Let the President sign it or veto it. The truth is there is no job-creating agenda offered at this time by the majority party.

The President's comprehensive initiative will accelerate economic growth, and it will create jobs without adding to our Nation's burgeoning debt. Let us debate it, Mr. President. Let us pass it.

Congress must stop playing games with our Nation's future. The President's package is not a political football that should be kicked about in a recalcitrant Congress. It is a serious proposal and it deserves serious consideration. It is time to look forward to the next generation in America, not the next election.

There was a distressing article in Monday's Washington Post. The headline reads, "Democrats See Political Opening in Bush's Tax Plan." Political opening. Congress is playing games with the future of America. This package is not a political football.

Mr. President, the problem with this article and with this headline is that we are not talking about a policy difference that can be debated on the merits. We are talking about a political opening, a political opportunity to make political gains at the expense of thousands, indeed, millions of American workers.

The President was right. No issue has ever been more demagoged by its opponents.

"The plan favors the rich" is the battle cry that I constantly hear. Well, let me ask you: Is a $500 increase in the personal exemption for children helping the rich? Does anybody here believe that families are undertaxed?

Is allowing penalty-free withdrawals from IRA's for first-time home buyers or medical or education expenses helping the rich? More than 70 Senators have already cosponsored similar legislation. Is a $5,000 tax credit for first-time home buyers a giveaway to the rich? The rich already have homes, Mr. President. It is the poor and the needy and the middle class and those who are trying to move up and buy a home who are the ones needing the tax credit, Mr. President.

Is a low-income housing credit designed to help the wealthy? Is allowing a deduction for interest on student loans a giveaway to the rich? Rich people do not need student loans, Mr. President. They are rich.

The fact is that most Members of Congress from both political parties support the bulk of the President's growth agenda. They just do not want to admit it. They would rather carp about it and the capital gains tax and play politics while people stand in unemployment lines.

Two and one-half years ago, when I was serving in the House of Representatives, the Ways and Means Committee reported a reconciliation bill that included a significant cut in the capital gains tax rate. At that time the Democratic leadership in the House thought they had a good political issue so they

decided to offer an amendment to strip the capital gains tax cut and raise income tax rates. Guess what happened? Sixty-four Democrats in the House knew that this capital gains tax cut would create jobs, and they supported the President—64 Democrats. And at that time the class warfare argument was soundly defeated.

Perhaps if that measure had not been blocked singlehandedly by the current Senate majority leader, then we would not be in these current economic straits. How many jobs would have been created over the past 2½ years had that proposal passed?

The point is, Mr. President, that a great many Democrats do support a capital gains tax cut to create jobs. It is not a partisan matter in that regard by those individuals. If those Democrats supported the tax cut because they thought it was a gift for the wealthy, they should say so. If a capital gains tax cut is a tax cut for the rich, as the Democratic leadership suggests, then JAMIE WHITTEN, Democratic chairman of the House, is a friend of the wealthy; JACK BROOKS, chairman of House Judiciary Committee, is a friend of the wealthy; SONNY MONTGOMERY, chairman of the House Veterans Committee, is a friend of the wealthy.

Senator DECONCINI on CNN last week said, "I am one of the few Democrats who support capital gains." Is he a friend of the rich, Mr. President?

It is not all Democrats. It is obstructionist liberal Democrats who oppose the President and oppose any progress while we play politics.

Mr. President, I ask at this point unanimous consent to have printed in the RECORD the list of the House Democrats who did support the capital gains tax cut in 1989.

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

HOUSE DEMOCRATS VOTING IN SUPPORT OF CAPITAL GAINS TAX CUT

Glen Browder of Alabama.
Ben Erdreich of Alabama.
Claude Harris of Alabama.
Norm Mineta of California.
Matthew Martinez of California.
Glenn Anderson of California.
Ben Campbell of Colorado.
Earl Hutto of Florida.
Lindsay Thomas of Georgia.
Charles Hatcher of Georgia.
Richard Ray of Georgia.
Ben Jones of Georgia.
George Darden of Georgia.
Roy Rowland of Georgia.
Ed Jenkins of Georgia.
Doug Barnard of Georgia.
Richard Stallings of Idaho.
Jill Long of Indiana.
Neal Smith of Iowa.
Carroll Hubbard of Kentucky.
William Natcher of Kentucky.
Romano Mazzoli of Kentucky.
Carl Perkins of Kentucky.
Billy Tauzin of Louisiana.
Jerry Huckaby of Louisiana.
James Hayes of Louisiana.
Thomas McMillen of Maryland.
Beverly Byron of Maryland.
Joseph Early of Massachusetts.
Bob Carr of Michigan.
Jamie Whitten of Mississippi.
Sonny Montgomery of Mississippi.
Mike Parker of Mississippi.
Ike Skelton of Missouri.
Robert Roe of New Jersey.
Robert Mrazek of New York.
Glenn English of Oklahoma.
Ron Wyden of Oregon.
Butler Derrick of South Carolina.
Elizabeth Patterson of South Carolina.
Robin Tallon of South Carolina.
Marilyn Lloyd of Tennessee.
John Tanner of Tennessee.
Charlie Wilson of Texas.
Ralph Hall of Texas.
Jack Brooks of Texas.
J.J. Pickle of Texas.
Pete Geren of Texas.
Greg Laughlin of Texas.
Michael Andrews of Texas.
Solomon Ortiz of Texas.
Wayne Owens of Utah.
Owen Pickett of Virginia.
L.F. Payne of Virginia.

(Based on House rollcall vote of September 28, 1989, CQ–Pg. 2592.)

Mr. SMITH. The critics of capital gains cannot have it both ways. If it is a giveaway to the rich, then a great many Democrats have some explaining to do.

If the tax cut would create jobs, as the President and many of my colleagues on both sides of the aisle maintain, then why the strident opposition? I will tell you why, Mr. President. Because some in this body are more interested in good politics than good policy.

The American people, in poll after poll after poll, state over and over again, "We are sick of the Congress playing politics. We want action. We want something done."

It does not take a genius to understand that poor people do not employ anybody. Poor people are looking for jobs. Some rich people create those jobs. Businesses create those jobs. It does not mean we should not help the less fortunate. It simply means we should help them by passing legislation which will give them the opportunity to find good work.

Congress spent 145 days haggling over unemployment benefits because the majority party ignored the position of the President for their own political gain. We wanted to pay for it. That is all the President was saying. Unemployment compensation, and let us pay for it. I know it is unheard of around this place to pay for anything. But now, as a result of that, many people in New Hampshire are homeless, lost their homes, because they had to wait 145 days. I am not going to let that happen again.

Mr. President, I believe there is a bipartisan majority of the Members of Congress in support of nearly every growth proposal put forth in the President's plan. The only hurdle we have to leap is the politics of the class envy. Paul Tsongas, former Member of this body, said:

Some Democrats oppose any capital gains differential because supporting it prevents them from using the "class warfare" argument against the Republicans. Taking aggressive anti-business positions is second nature to them. Class warfare is certainly good politics.

Mr. President, Paul Tsongas was right. President Bush gave Congress a deadline of March 20. He submitted a package in 1989, 1990, 1991, and again in 1992. It is time for Congress to put up or shut up.

Thank you, Mr. President.

THE 1ST MARINE DIVISION—THE MOST DECORATED DIVISION IN THE U.S. MARINE CORPS

Mr. NUNN. Mr. President, February 1 of 1992 marked an important date and celebration for an outstanding unit in the U.S. Armed Forces. More specifically, this day marked the 51st birthday of the 1st Marine Division of the U.S. Marine Corps. Last year's planned 50th birthday celebration took a back seat to a more pressing event—the Persian Gulf conflict. Virtually the entire 1st Marine Division was deployed to the Persian Gulf and served our country with distinction. About this time last year, elements of the 1st Marine Division were prepared for their initial assault through the complex obstacle belts.

The year's delay only gave the marines of the 1st Marine Division more reason to celebrate their distinguished heritage. Last Saturday, at their home in Camp Pendleton, CA, the 1st Marine Division marked its 51st birthday with a series of military demonstrations, parades, exhibits, and other events for the men and women of the division and their families, former members of the division, and for friends, guests, and the general public.

Mr. President, the 1st Marine Division is a direct descendant of the advanced base brigade which was activated in 1913. After many redesignations, on February 1, 1941, the 1st Marine Division was founded and, in fact, became the very first unit in the Marine Corps to be designated as a division.

This outstanding division constitutes a unique group of men and women—past and present—who have served our country with distinction in peacetime and in war over the last five decades.

The 1st Marine Division has distinguished itself in every major conflict since World War II. Many of the division's campaigns in these conflicts are famous in military annals: Guadalcanal, Okinawa, Chosin Reservoir, and Hue City.

And let us not forget, it was just 18 months ago when the 1st Marine Division was one of the first major combat units with firepower and sustainability to arrive in Saudi Arabia. The 1st Marine Division—and its parent command

of the 1st Marine Expeditionary Force as well as the aviation combat element and force service support elements—arrived very early on and stayed throughout the conflict.

On May 8, 1991, Maj. Gen. Mike Myatt, the 1st Marine Division commander, and several of the division's personnel testified before the Committee on Armed Services and gave first-hand accounts of the complex and dangerous missions they were involved in as participants in Operation Desert Shield/Desert Storm. The committee was very impressed with their skill, dedication, and leadership, as we were with the representatives of all the services that provided first-hand accounts of their activities in the Persian Gulf. The 1st Marine Division along with the 2d Marine Division from Camp Lejuene and the Army Tiger Brigade were the driving force that liberated the city of Kuwait and were involved in many other complex military maneuvers and fights before and during the actual ground operations.

The 1st Marine Division also has a distinguished record of supporting humanitarian relief efforts throughout the world during peacetime. Members of this division were the cornerstone of Operation New Arrival in 1975, where Marines provided housing, food, and care for Vietnamese refugees. In September 1988, a Marine air ground task force from the 1st Marine Division was deployed to Yellowstone National Forest to help fight devastating forest fires.

In 1991 alone, members of the 1st Marine Division played major roles in two humanitarian efforts. In April, members of the division participated in Operation Sea Angel, providing relief to victims of a devastating cyclone in Bangladesh. In June, division members assisted in the evacuation of Americans from the eruptions of Mount Pinatubo in the Philippines as part of Operation Fiery Vigil.

Mr. President, the range of combat and humanitarian operations carried out by the 1st Marine Division are representative of the types of activities that all of our men and women in uniform from all the services have been called on to perform both in times of peace and war. These are the kinds of activities I had in mind when I spoke last week about the dedication and sacrifices that our military members and their families have demonstrated in winning the cold war.

The 1st Marine Division, and their current commanders, are noted for their pioneering efforts in terms of tactics, organization, and leadership. Today, the 1st Marine Division, with its home base in Camp Pendleton, has forward deployed battalions and Marine air-ground task forces around the globe. They have a newly configured air alert force at Pendleton that is ready to go at a moment's notice and is organized for commend, control, firepower, and mobility with air and ground elements. The air alert force can be the lead element of a joint task force and can provide needed firepower, mobility, and command and control for later arriving units.

The men and women of the 1st Marine Division stand ready to defend and protect our country and to provide humanitarian assistance to those in need around the world. It should be no surprise that the Marine Corps history indicates this division has the unique honor of being the most decorated division in the U.S. Marine Corps. That is a high honor, considering the very significant record of the Marine Corps as one of the world's elite military organizations.

Mr. President, we could bring to the attention of the Senate many outstanding units from all the services on their special days, but oftentimes we do not hear about these local events in time. This particular celebration was brought to my attention by my staff director on the Armed Services Committee, Arnold Punaro—who served with the 1st Marine Division both in Vietnam and briefly in Saudi Arabia. He happened to be on Active Duty for training with them several weeks ago and heard about it.

Mr. President, I want to congratulate the 1st Marine Division and all of its members—past and present—for 51 years of dedicated service to the United States. We know this division will perform with equal distinction in the future to any task they are given. We in Congress will work to ensure they have the training, equipment, and support they need to perform the tasks the country expects of them, as we will for units in all the services.

SCETV SALUTES BLACK HISTORY MONTH

Mr. HOLLINGS. Mr. President, I rise today to bring to the attention of my colleagues the exemplary work of South Carolina Educational Television [SCETV] in honoring National Black History Month. Throughout the month of February, SCETV is focusing on the culture and accomplishments of African-Americans with several special programs.

For example, SCETV will broadcast its fifth annual black history teleconference titled "The Struggle Continues: Finding New Worlds to Challenge." This innovative and thought-provoking special will feature eight high school honor students from South Carolina who will question seven nationally prominent African-Americans. The focus of the program, which each year presents a variety of role models for America's youth, is to recognize and discuss the goals and achievements of African-Americans. Dr. Marianna W. Davis of Keenan High School in Columbia, SC, who initiated and developed the teleconference, is a real credit to her profession. Her leadership as an educator serves as an outstanding example to her colleagues in South Carolina and across the country.

Mr. President, I would like to recognize and congratulate the eight young South Carolinians who were chosen to participate in the project: Tanya Benson of Newberry High School; Felicia Donaldson of Dixie High School in Due West; Schwandia Felder of Cross High School; Adrian Gamon of Scott's Branch High School in Summerton; Marvin Goodwine of Lincoln High School in McClellanville; Bianca Mack of Goose Creek High School; Kalisha Tarrance of Easly High School; and Nicole Thompson of C.A. Johnson High School in Columbia. These outstanding students deserve our praise for both their academic and civic achievements. I wish them the best of luck as they move on to college and careers.

Mr. President, I commend South Carolina Educational Television, Dr. Davis, and the panelists and students of "The Struggle Continues," on their commitment to cultural excellence in broadcasting. We are very proud of our fine educational network, and we are especially proud to have South Carolina lead the Nation with such important programming during National Black History Month.

THE 1992 NATIONAL DRUG CONTROL STRATEGY

Mr. THURMOND. Mr. President, on Tuesday, the Director of the Office of National Drug Control Policy, Bob Martinez, appeared before the Judiciary Committee to discuss President Bush's updated strategy to fight drug abuse. There have been efforts by some to discredit the Bush administration's progress in the Nation's war on drugs. I thought it would be helpful to offer a clear and concise summary of the success this administration has had in this important domestic issue. Let's look past the rhetoric and review reality.

Since President Bush assumed office, according to figures provided by Governor Martinez, drug use has been driven down to its lowest level since the Government started collecting figures on drug usage in the 1970's. Drug-related crimes have begun to turn down as well with drug arrests down by 20 percent from 1989 to 1990.

Mr. President, the general public has decreased its demand for illicit narcotics. Americans spent less on illicit drugs in the United States in 1990 compared to 1988 due to a decrease in demand for illegal drugs. In the past 6 years, the number of current drug users in the United States has dropped to 35 percent. There is significant evidence that among adolescents, the segment most susceptible to the lure of drugs, drug use is declining and atti-

tudes toward drug use are changing. For example, the high school senior survey reports that from 1988 to 1990, the number of students who disapprove of drug use rose by 28 percent. Correspondingly, the perceived harmfulness of drugs has increased. Since 1988, drug use by American teenagers has declined by 27 percent. During the same period, cocaine use by teenagers declined by 63 percent. These figures surpass the goals set forth in the President's first national drug control strategy and indicate that, in many ways, the strategies since 1989 have sustained or increased their level of effectiveness. In particular, these statistics show that our efforts to educate our young people about the pernicious effects of illicit drug use are succeeding and that we are slowly winning the war on casual drug use.

Surveys of households and high school students and drug testing of arrestees indicate the same overall downward trend. Drug use is down for those with higher levels of education. It is down for those who live in the suburbs, and it is down for the employed. However, we must not ignore the fact that there are some recent indications of an increase in cocainerelated medical emergencies which have been attributed to hard-core adult users. We cannot win the entire war at once; any solution will take time. Nevertheless, we should be mindful that less than 1 percent of this country's population currently uses cocaine, but this should in no way lessen our resolve to keep the pressure on. We must keep pressing ahead in our efforts to eliminate the scourge of drug abuse.

Mr. President, with a significant amount of progress already being made within the casual user population, the Office of National Drug Control Policy has developed its strategy to focus on decreasing the number of hard-core drug users, nearly doubling the funds for treatment and related research between 1989 and 1993. Yet this effort cannot be accomplished without the active support of the Congress. The President has identified and addressed the problem of drugs in a responsible and systematic way, but without the consistent nonpartisan cooperation of the Congress, the drug problem will not go away. The administration has repeatedly asked for the necessary tools, many of which the Congress has repeatedly failed to provide.

For example, recognizing the need for more prevention and treatment, the President has overseen a 17 percent increase in treatment funding to $1.5 billion. However, when the President sought to increase treatment funding by another 10 percent for fiscal year 1992 to target treatment of hard-core abusers, congressional proponents of drug treatment were silent. An administration proposal to increase the capacity of targeted treatment programs received less than 10 percent of the requested amount.

The President's national drug control strategy has also maintained an aggressive and effective attack on the supply side. Prosecution efforts have brought former untouchables including Manuel Noriega, Carlos Lehder, the Cali Cartel, and other leading figures in the drug trade within the confines of the criminal justice system. As a followup to the 1990 Cartagena summit, the President has invited the leaders of the Andean countries to attend a summit this year hosted by the United States. The administration has offered a substantial aid package to each Andean nation conditioned upon progress against drug trafficking. We must continue to take such measures in support of the fight against drugs.

Mr. President, the current commitment to the Nation's antidrug effort is unparalleled, but as the drug problem becomes increasingly confined to older and inner-city addicts, there may be a tendency for the media, the Congress, and others to walk away. I am confident that President Bush and the drug policy Director, Governor Bob Martinez, will continue to place drugs on the top of the administration's priority list, and I urge the Congress to follow suit.

Mr. President, though facts generally speak for themselves, I though it appropriate to remind my colleagues of just a few of the President's accomplishments in one of the most vital domestic issues for the American people: the war on drugs. To continue this effort, the 1992 national drug control strategy requests $12.7 billion for fiscal year 1993 for a variety of programs aimed at prevention, education, treatment, and enforcement. I commend the President and Director Martinez for their leadership and pledge my continued commitment to implementing this strategy.

For these reasons, I urge my colleagues to review the 1992 strategy and work to further its full implementation.

ASHLEY THRIFT: A PASSION FOR PUBLIC SERVICE

Mr. HOLLINGS. Mr. President, at the end of January, Ashley Thrift resigned as my administrative assistant to return to North Carolina, where his wife Julianne is newly installed as president of Salem College. During his 15-year tenure on the Hill, Senators and staff alike have come to respect Ashley as an exceptionally talented lawyer and legislative strategist. With his departure, I will lose the best administrative assistant in the Senate—bar none. And the Senate will lose its most effective and energetic behind-the-scenes champion of public education.

On that score, Mr. President, Ashley has gone out with a flourish. Just 2 weeks ago when we were debating the Neighborhood Schools Improvement Act, Ashley played the key staff role in defeating amendments that would have siphoned off public money to private schools. Ashley was the indispensable catalyst: Counting the votes, devising the tactics, rallying the troops in the various education groups—and winning.

In similar fashion, throughout the 1980's, I counted on Ashley to organize the countercharge against Reagan administration efforts to slash education. In each of 3 years—1983, 1986, and 1987—we won billion-dollar-plus increases in Federal aid to education, and it was Ashley's tireless commitment to those battles that made all the difference.

Mr. President, through it all, Ashley has remained every bit the Chapel Hill gentleman—honest, decent, and self-controlled on every subject save ACC basketball. For a decade and a half, on a day-to-day basis, I have relied on his advice and uncommon good sense. During countless late-night sessions, Ashley has always been there. His loyalty and friendship have meant more to me than I can say.

I often quote Elihu Root, who said:

> The principal ground of reproach against any American citizen should be that he is not a politician.

Ashley is a politician in the very best sense of the word. He knows that the purpose of politics is to attain power, and the purpose of power is to wield it skillfully to make a positive difference in people's lives.

Mr. President, Ashley Thrift has served the Senate brilliantly and unselfishly. I have no doubt that his passion for public service will now continue in private life. I join with every Member of this body in wishing him Godspeed.

ADVANCED SOLID ROCKET MOTOR

Mr. HEFLIN. Mr. President, I rise today in support of NASA's advanced solid rocket motor program. Begun in 1987, this program has enjoyed the support of both Congress and the administration. This year, however, President Bush has chosen to cancel funding for the ASRM. I believe this is a serious misjudgment.

Immediately after the *Challenger* accident, NSAS implemented a crash program to develop a redesigned solid rocket motor [RSRM]. The RSRM has now flown successfully on 20 shuttle missions, a record of which NASA can be proud. We cannot, however, let this success cloud our judgment. The redesigned motor was never envisioned as more than a quick fix, an interim motor that would allow continued use of the shuttle until a safer, more reliable motor, the advanced solid rocket motor, could be designed and built. The redesigned motor is better than the original, but is still subject to a num-

ber of major design weakenesses that could not be remedied. Therefore, there is an urgent need for motors.

ASRM incorporates totally new mechanical and ballistic designs that, when coupled with quality and reproductive enhancements, result in greatly increased flight safety. It is not a product improvement; it is the motor that will put up the space station and carry us well into the next century. The advanced solid rocket motor is subject to far less failure causes than the current model while providing greatly enhanced performance.

To a large degree, the added safety and reliability of the ASRM will be due to the highly automated production facility being constructed at Yellow Creek, MS. Extensive research into past discrepancies in solid rocket motor performance has shown that almost half of these are due to human involvement in the manufacturing process. Instead of mixing the propellant in small batches and randomly sampling as is done for the current motors, the new facility will make use of computerized machinery to continually mix and sample the composite propellant before and during the motor fill process. Another result of the increased automation will be decreased unit cost. Each set of ASRM's is expected to cost $12 million less than the present motors.

The total ASRM program is expected to cost just over $3 billion, of which we have already appropriated $1.2 billion. Some program critics claim that canceling the program now would result in substantial saving and have only a minor impact on the space station program. This is simply untrue. The lack of an advanced motor would result in three extra shuttle flights dedicated to the station mission, and a 9-month slip in the space station program schedule. That's three extra flights at approximately $300 million per flight, and a schedule slip that will result in $500 million in increased costs. Combine these with $400 million in contract termination liability and you have a total cancelation cost of approximately $1.8 billion. Thus it will cost as much to cancel as it will to finish it.

The financial choice is clear. We can stick with a marginally safe rocket motor, outdated technology, and delay the space station program for almost a year, or for the same price field an ultrasafe motor and build a state-of-the-art rocket motor facility that will reduce cost and increase reliability of an untold number of future systems.

The ASRM program is a vital part of our future in space, and I just cannot understand President Bush's rationale in zeroing its funding. Like all my colleagues, I fully understand the country's economic situation and the needs of the people today, but it is the responsibility of this Nation's leadership to look to tomorrow's needs as well. We must recognize the competitive international environment that our aerospace industries will be operating in during the years to come.

We need ASRM to put the space station in place safely and economically. We need ASRM for the heavy lift version of the national launch system. We need ASRM to maintain our international competitiveness in space systems.

I urge my friends and colleagues to rally around NASA and the advanced solid rocket motor. Funds spent on high technology and space utilization are investments that ensure our place in the future, and deserve our support.

AN EDITORIAL IN THE FLORENCE MORNING NEWS

Mr. THURMOND. Mr. President since President Bush's inauguration on a cold January day in 1989, he has shown himself to be a man of character, courage, and compassion, and an outstanding leader. It has been my pleasure to work with him for the good of our Nation, and I look forward to continuing our association in the future.

However, I must confess my belief that there is one person in Washington who could be a serious threat to him in 1992, should she choose to run. Mr. President, I speak of our Nation's indefatigable First lady, Barbara Bush.

Throughout the last few years, Mrs. Bush has won the hearts of millions of Americans with her warmth, charm, and well-developed sense of humor. With her understated ways and abundant common sense, she has become a wonderful advocate for America's children and for education. She has also become one of her husband's strongest assets.

During the President's recent trip to Japan, Mrs. Bush once again demonstrated her native diplomacy and grace under pressure when the President suddenly became ill. Mrs. Bush is a woman of substance and a great lady, and we should all be very proud of her.

The Florence Morning News of Florence, SC, recently carried an editorial praising Mrs. Bush, and I ask unanimous consent that it be inserted following my remarks.

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

BARBARA BUSH'S GRACIOUSNESS

The unflappable Barbara Bush displayed the skills of a master diplomat the other night when her husband was taken ill at a state dinner in Tokyo. Without exchanging a word with the president, she sized up his condition, weighed the effect his departure would have on their hosts—and decided her place was at the banquet, smoothing the waters.

That she did, with a wry wit and understated graciousness that snowed the Japanese. Asked to say a few words, just minutes after her husband's collapse, she jokingly blamed the episode on the U.S. ambassador. He and Bush had been beaten at tennis that afternoon by the emperor and crown prince. We Bushes, she said, aren't used to losing. "He felt much worse than I thought."

One Japanese TV news anchor called the first lady's poised and reassuring performance "a phenomenal achievement." Another broadcast the tape of Mrs. Bush, then rewound it and showed it again, pronouncing it "the major address of the day."

Clearly no apologies are needed for this vintage American product.

There is some question now whether President Bush can be defeated in November. Some democrats believe they can take back the White House in 1992. If that's so, those Democrats should be happy that George, not Barbara, Bush will be the candidate.

Barbara Bush would sweep to victory.

EDITORIALS IN THE CHARLESTON POST AND COURIER AND THE AUGUSTA CHRONICLE

Mr. THURMOND. Mr. President, in his State of the Union Address last week, President Bush laid out a magnificent program to put our Nation on the road to a brighter future. One of the main initiatives he proposed was an aggressive plan for economic recovery, taking into account both short-term relief and long-term economic growth.

During the course of his impressive speech, President Bush asked the Congress to help by acting on his proposals in a timely fashion. As I said following the speech, I believe the ball is now in our court and we must implement the President's suggestions without delay.

Two papers which serve my State, the Charleston Post and Courier and the Augusta Chronicle, recently carried editorials which argue persuasively for prompt implementation of the President's program, and I ask unanimous consent that these editorials be inserted into the RECORD following my remarks.

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

[From the Charleston Post and Courier, Jan. 30, 1992]

BUSH LEADS, BUT WILL CONGRESS FOLLOW?

In a forceful State of the Union address to Congress Tuesday night, President Bush summoned the lawmakers, and, by extension, the nation, to focus on solving the current economic malaise with the same ingenuity and energy that carried the United States to resounding victory in the Persian Gulf War just one year ago.

Considering the gravity of the situation and the political stakes involved, Mr. Bush was surprisingly at ease. He bantered with some of the lawmakers assembled in the House chamber and elicited more than a few laughs, at his own expense as well as Congress'.

But he was deadly serious when he called for the legislators to pass his proposed economic recovery program by March 20.

The deadline was more rhetorical than real, since it was evident Mr. Bush did not wish either to challenge Congress or to try to pin the blame on it for the lingering recession. The date was a goal that emphasized

the urgency of devising a comprehensive remedy for the country's economic ills. If some lawmakers chose to interpret it as a challenge, their petulance betrayed a defensiveness about Congress' role in the problem that most people on Capitol Hill hope to avoid.

The president departed from the themes of more recent State of the Union addresses by dwelling extensively on ways to stimulate the economy rather than merely holding the line on federal spending.

There were of course, the by-now-obligatory calls for Congress to trim its fiscal sails, toe the line on spending caps it agreed to in November 1990, swear off its eleventh-hour habit of larding the budget with outrageously self-serving pork-barrel spending, and give the president the line-item veto.

Perhaps the biggest surprise of the address was Mr. Bush's announcement that he is exercising his powers as chief executive and giving the economy a $23 billion shot in the arm. The centerpiece is a directive giving employers the option to withhold less in federal taxes from workers' paychecks beginning March 1—or sooner.

The Associated Press reported that increases in take-home pay would range from about $175 for single taxpayers to more than $600 for two-income families. Mr. Bush said he hoped that freeing more of the taxpayers' own salaries will have a ripple effect, as people use the extra money to purchase clothing, appliances and other goods that will benefit the economy overall.

Beyond that, Mr. Bush also directed federal offices and agencies that fall under the executive branch to impose a 90-day freeze on new regulations that could conceivably put the brakes on a recovery. It is an excellent idea, but it begs the question. If the regulations are harmful to the economy, why were they enacted in the first place?

Additionally, the president enumerated proposals geared to help families and individuals, including raising the federal tax deduction for dependent children, providing tax credits and vouchers to help low- and middle-income families buy health insurance, and giving first-time home buyers a tax credit while allowing them to withdraw from Individual Retirement Accounts without penalty.

All of these moves are aimed at restoring consumer confidence, which many economists see as the key to putting the economy on the road to recovery. In that regard, there was something for just about everyone in the State of he Union address. And, while most of Mr. Bush's proposals will not contribute immediately to the growth in the deficit there is reason to believe that they will unless the economy rebounds fairly quickly and Congress exercises fiscal restraint.

One of the major criticisms of the Bush administration to emerge in the wake of the recession is the president's apparent inability to lead—to articulate an agenda that gives a broad cross section of Americans hope for the recovery. By shrewdly casting his proposals as the domestic equivalent of the Gulf War. Mr. Bush sounded very much like the war leader who led the country to victory last year.

The question now is, will Congress follow him?

[From the Augusta Chronicle, Jan. 30, 1992]

IT'S CONGRESS' TURN

In comparing President Bush's upbeat State-of-the-Union speech with Democrat House Speaker Tom Foley's gloom-and-doom response, the president's critics have been thrown on the defensive for the first time in months.

People may bicker over this or that in the president's economic recovery program. But at least his potpourri of proposals calling for tax cuts and tax credits, relaxation of regulations, easier terms for borrowers, less money for defense, more money for children, wider access to health insurance and more federal aid to cities would stimulate the economy.

Indeed, White House economists estimate if the plan is enacted in its entirely by the deadline date of March 20 it would create half a million jobs this year.

In measuring what competing plans in Congress and on the presidential stump are offering, the bottom-line issue is: How many jobs will they create?

Job growth, after all, is what recovery is all about.

For months congressional leaders have been beating up on the president—with some justification—for not coming out sooner with a recession-busting program. Well, now the wait is over. The next move is up to Congress.

They said they couldn't do anything without presidential leadership. Bush is finally supplying that leadership.

Congress must either come up with a better recovery plan or act on his. Carping, criticizing and vague promises that "We can do better" won't cut it.

As for the president, it's important he keep his party behind him. If he compromises too much with the Democrats, as he did in the October 1990 budget deal, conservatives will bolt and push their own plan.

Bush can't afford to go into an election with his party divided on the economy and expect to win. In a classic "damming with faint praise" comment, conservative challenger Pat Buchanan said in New Hampshire he was glad to see the president was joining him in running against the Bush record of the past three years.

That's a backhanded recognition by Buchanan that conservatives, for the most part, are enthusiastic about the president's program. Just hope Bush doesn't bargain that support away.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

NATIONAL ENERGY SECURITY ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 2166, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2166) to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gore/Chafee Amendment No. 1570, to urge the President to take the appropriate actions to combat Stratospheric Ozone Depletion.

AMENDMENT NO. 1570

Mr. GORE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is amendment No. 1570, offered by the Senator from Tennessee and the Senator from Rhode Island.

Mr. GORE. Mr. President, I would like to ask that if any cosponsors of the amendment or the resolution from which the amendment is drawn wishes to speak on the pending amendment prior to the yeas and nays—the yeas and nays have been ordered on the amendment—please call the Cloakroom in case there is a time agreement so that we will know how much time.

I do not intend to take a great deal of time, but I do want to afford an opportunity to any of my cosponsors to speak if they care to.

I would like to add at this time, subject to the unanimous-consent request of yesterday, as original cosponsors Senators MIKULSKI, LIEBERMAN, DODD, MOYNIHAN, CRANSTON, KENNEDY, and CONRAD. I will add others prior to the vote, as they wish.

I proposed this amendment yesterday in behalf of myself and Senator CHAFEE and the distinguished occupant of the Chair, the Senator from Colorado, Senator WIRTH, who has been very active on all of these issues, as, of course, has Senator CHAFEE and Senator BAUCUS, and many others in this Chamber.

I also want to describe, Mr. President, the difference between this amendment and pending legislation, which goes a little bit further than this amendment.

I believe we should specify the date 1995 for the phaseout of these ozone depleting chemicals. I believe that we should include among those to be phased out the short-lived ozone depleters. Up until now, priority has been assigned to the ozone depleting chemicals with long lifetimes in the atmosphere before they fall out. That is because our understanding of the problem has been that is a long-term, critical threat to the global environment.

Because of the news released last year and the even more troubling news released last Monday, we now have a clearer understanding that we face not only a long-term, critical threat to the global environment, but also an immediate, acute emergency threat, which means that we must now also assign priority to the short-lived ozone depleting chemicals, in addition to the long-lived ozone depleting chemicals.

This amendment differs from the pending legislation in a couple of respects. In order that the Senate might speak quickly, with as loud and persuasive a voice as possible, with as much support for the amendment as possible, I have worked with my colleagues on both sides of the aisle to take to the limits what is the toughest statement we can make to the administration and to the rest of the world.

So this amendment does two things. It says the administration must obey the law and accelerate the phaseout of ozone depleting chemicals. That accel-

erated phaseout is required by the Clean Air Act.

In fact, the President of the United States has been in violation of the law since last April because the law states very clearly that when evidence is presented, scientifically validated in the form described in the law, showing that the problem is significantly worse than was known when the Clean Air Act passed, then the President is required—not asked to do it, but required—by law to accelerate the phaseout schedule.

Last April we were told that the depletion process is taking place 200 percent faster than was previously known. But did the President react? No. No reaction. The head of the EPA was in the paper last spring saying: This is awful news; we obviously now have to accelerate the phaseout.

Unfortuntely, when his recommendations got over to the White House, President Bush—of course, Mr. Sununu got the blame for it. But the White House said: No; we reject the recommendation of the EPA, even though the depletion is taking place three times faster than we thought, even though so many people are telling us the law absolutely requires us to accelerate it; we do not want to do it because we are afraid of inconveniencing the people who sell these chemicals.

Since that time, the President has been in violation of the law. Now, last fall we had another event, a second scientific report last year, which again described a new level of seriousness in this threat, telling us that for the first time, the ozone depletion above the United States is now talking place in summer, as well as in winter.

That is especially significant because the damage done by ultraviolet radiation is much greater in summer than in winter. And it had been previously thought at the time the Clean Air Act was passed that the ozone depletion above the United States at these latitudes was taking place only in winter and that the atmosphere was in effect healing itself, restoring the thickness of the ozone layer at these latitudes by the time summer rolled around.

Last fall, we were told that is not true anymore; the damage is so much worse; it is now occurring in the summer, as well. Again, the EPA said: this is, once more, terrible news; we have to accelerate the phaseout.

Once more the White House said no, because it might inconvenience somebody.

The legislation from which the pending amendment is drawn was brought to this Chamber at that time. It was actually brought after the April event, but it was brought up again. I discussed it here, as did others last fall. But the White House prevented this body from acting. They asked some of our Republican colleagues to hold up the amendment, to threaten a filibuster, to say this cannot go forward because the White House is opposed to it.

Because the session was nearing conclusion at the end of the year, their ability to stop the matter was enhanced. So the White House prevailed in stopping the measure to require them to abide by the law.

Now the situation is different. We have a third new scientific report. Only this time, the report says we can expect an ozone hole above Kennebunkport. Now, finally, the President seems to be getting the message. Once again, the EPA lets the news slip to the newspapers: This justifies an accelerated phaseout.

That is the same story we saw last April: We are going to speed things up. We are going to speed things up. The White House nixed it. This time, maybe the White House will not nix it.

Mr. President, let me say this: It is easy enough to act after the crisis. It is harder to act to prevent the crisis. The President failed to listen to the warnings. The President failed to comply with the law. The President failed utterly to provide any kind of leadership.

The signals coming out of the White House this morning still have to do with the position of the United States at the international meeting. What about the requirements of the law here in the United States? What about the accelerated phaseout under U.S. law, in addition to whatever is negotiated with other countries? Still, the White House is refusing to act. I hope they will change, and I hope that this body will pass this amendment by the strongest possible margin. I invite my Republican colleagues and my Democratic colleagues to try to make this unanimous, to get the message to the President. It has not been completely a partisan issue in this Chamber. My cosponsor, Senator CHAFEE, has been a preeminent leader on this question. But it has been partisan because of the White House.

What are other countries doing, in stark contrast to the lack of leadership on the part of President Bush? In the European Community, legislation has already passed. In fact, it was passed some time ago, greatly accelerating the phaseout to deadlines that far exceed the ones in the Clean Air Act. I will include in the RECORD, at the end of my speech, information about what other countries are doing.

But we are bringing up the rear, Mr. President. Do you remember the days when the United States was a leader in the world on questions like these, when we had the moral high ground, when other nations looked to us to say and do the right thing and bring them along? What happened? I will tell you what happened. We have had, in the last dozen years, from former President Reagan, and now from the current occupant of the White House, President Bush, a stonewalling approach to these issues affecting the global environment.

Other countries have taken leadership away from the United States. President Bush is the only major world leader to refuse to go to this Earth summit in Brazil this June. Every other world leader has said, "Yes, we are going, and we are going with the intent to get something done there."

Mr. President, let me describe briefly at this point the exact nature of the news which leads to this amendment. On Monday, scientists announced the highest levels of reactive chlorine capable of destroying stratospheric ozone ever measured. You remember the ozone hole above Antarctica. They measured the reactive chlorine compounds there before each of the ozone holes appeared above Antarctia. The levels in the atmosphere above the northern hemisphere are half again higher than the levels found in Antarctica just before the appearance of the ozone holes there. The vortex is centered over Greenland and stretches down over Maine and New England, and its outer edges are over the whole northern United States. Those at risk includes hundreds of millions of people in North America, Scandinavia, Europe, and also in Siberia, which is much less populated, of course.

The climate system is responding in what the scientists call a nonlinear fashion. What does that word mean? We all know what that word means. It is as simple as the difference between a slow, steady change, and a change of the kind that builds gradually toward a threshold and then suddenly changes in a radical way. That is the kind of change now underway in our atmospheric system. And it was predicted.

Were the warnings heeded? No, they were not heeded. The President of the United States stuck his head in the sand and willfully decided to disobey the law. And as a consequence, the citizens of this country now have to tell their children that for the next few decades, we face the prospect of ozone holes above the places where we live. We have to tell our children that they must redefine their relationship to the sky, and they must begin to think of the sky as a threatening part of their environment and hide from the Sun. We have to read the stories of blind rabbits and blind salmon found in the areas under the edge of the ozone hole in the Southern Hemisphere, and wonder whether or not the progression of this catastrophe in our hemisphere will reach a stage where we find blind rabbits in our back yards.

It is easy enough, after the ozone hole is pointed to and predicted above Kennebunkport, to say, "OK, we will now think seriously about doing something." Where was the President when the warnings came through ringing so loudly and clearly for the last several

years? Make no mistake about this, Mr. President, there is a lesson in this incident where global warming is concerned. Most of the chemicals that are causing this catastrophe right now were put into the atmosphere over the last many years, as the scientists warned us to stop it.

But since we did not see the catastrophe happening at that moment, we did not feel the need to act. And we had no leadership from the White House to act, and so the country did not act. In this case, with Montreal Protocol, we did begin to act; let us phase out some of them—13 years later. And then, as the evidence mounted, we toughened our resolve and said, "Let us phase out 100 percent of some of the chemicals by the year 2000."

But we are still not eliminating all of the chemicals causing this damage. In fact, the concentrations are still increasing in the atmosphere. And because of the President's inaction, our current posture is that we will continue to put these chemicals into the atmosphere for another 8½ years before we stop.

The white House is well aware of the scientific evidence. For every 1 percent drop in the stratospheric ozone levels, there is a 2-percent increase in skin cancers here in the United States. Even before this new ozone hole report came out, the scientific evidence indicated an additional 300,000 deaths from skin cancer in the United States as a result of ozone depletion over the next few decades.

(Mr. METZENBAUM assumed the Chair.)

Mr. GORE. It is ironic that only now we begin to see some statements of concern.

Mr. President, I said a moment ago that there is a lesson here about global warming. Right now we are continuing to put chemicals into the atmosphere that the scientific community is telling us will create a climate catastrophe for the entire world, worse than the one unfolding above Kennebunkport right now.

But the White House wants to block any action. They do not see the catastrophe right now, so they do not feel the need to act right now. Besides it might be politically uncomfortable. Let us wait for catastrophe to happen and then play catch-up ball. That is the White House position on global warming and global climate change and that has been the White House position on ozone depletion.

Yes, after the hole is announced that will possibly appear above Kennebunkport, now they say OK, let us consider doing something. Before they would not.

What about global warming? What is the White House going to wait for there? You know one of the consequences of global warming that the scientists have told us about for years is an increased intensity of storms coming off of the ocean toward the land; hurricanes, 50 percent more powerful than the ones we have known throughout our lifetime.

Does anything happen in Kennebunkport lately that might fit that description? Have there been any unusual storms doing damages to houses in Kennebunkport?

Of course they can take comfort from the tiny minority of scientists who say we are not sure how to interpret this evidence, we are not sure there is any problem from putting this gaseous garbage into the atmosphere of the Earth. You can still find scientists, incidentally, who work for tobacco companies who say we are not sure that the evidence supports a conclusion that smoking causes lung cancer, and some people listen to them and believe them.

You know it is interesting when you look at the evidence, there is a lot of uncertainty there. They really do not know exactly how smoking causes lung cancer. The limits of science do not permit us to say with precision exactly how smoking causes heart disease or lung cancer or emphysema. Maybe on emphysema, I think it is probably a little easier to conclude that one. But the first two, there is uncertainty. In spite of the uncertainty, in spite of the unknowns about the details, the weight of the evidence is abundantly clear, and so we take action to discourage young people from beginning to smoke cigarettes.

Should we tell young people, go ahead we just do not know because some of the details are unclear? Of course not. I mean that was our position a few years ago in this country, but it is not now. It is exactly the same where global warming is concerned. All of those oil well fires in Kuwait put together, all 600 of them on the worst day of that catastrophe put less than 1 percent of the pollution into the atmosphere that we put into the global atmosphere every day. Our civilization is now the equivalent of a 10-pack-a-day habit. And the President of the United States still has his head in the sand and still refuses to act.

I reported earlier to my colleagues on the state of negotiations in Geneva on this question and on a whole range of important issues. The lineup is 139 countries on one side, and President George Bush on the other side.

For example, should we include the CFC's that are supposed to be controlled under the Montreal protocol in the Climate Global Change Treaty? Every other country in the world say of course not. We have a mechanism established there and we need to concentrate on toughening that. That is what this amendment does. Why should we then include them over on the Global Climate Change Treaty?

The answer is that President George Bush has been willing to commit to doing nothing about global climate change except phasing out CFC's according to the slow timetable in the current treaty. And so he insists that be a part of the global climate change negotiation because that is the only thing we will commit to. And if that is not in there, then the fact that he is doing absolutely nothing will be revealed.

There are a number of other matters where the lineup is 139 countries to 1 country. Some of you may have seen the cartoon by Herblock this morning—I asked that a copy be put on everyone's desk—with the finger coming through the sky pointing to Uncle Sam who has the paper that says "Hole in Ozone Layer, Global Warming," and he says, "Who? Me?"

President Bush has abdicated his responsibility. This amendment is a wake-up call. I hope that it will be unanimous. And I hope that the lessons that it holds for global warming and global climate change will be heeded in this body and in the White House.

I will have another amendment, Mr. President, on stabilizing emissions of gases which cause global warming. I recognize that the political consensus in this body has not reached the point that it has on ozone depleters, but I think we need a debate on that question.

A couple of other points briefly, and then I will conclude.

What does the ozone depletion mean for our constituents? No. 1, I mentioned already the extra cases of skin cancer. Second, many, many extra cases of cataracts and blindness due to cataracts. Third, an issue that has not received a great deal of discussion is the damage to the human immune system.

Scientists such as Dr. Margaret Kripke in Houston, TX, have for years studied the correlation between extra doses of ultraviolet B radiation and damage to the human immune system. I asked the question in hearings recently about the correlation between a huge increase in the amount of ultraviolet B radiation hitting the skin of every person on Earth and the sudden and dramatic increase in every single disease of the human immune system: Graves disease, arthritis, lupus, AIDS, and herpes.

The list is a long one, tragically. All of them have causes that have been studied. But the researchers are now looking at the correlation of the incidence of these diseases and the extra ultraviolet B radiation because of ozone depletion. In the case of lupus, a direct correlation has been found. More ultraviolet B radiation can trigger the onset of lupus in some individuals.

Again, the state of science does not yet permit precision with respect to every one of these diseases. They are just beginning the research in many cases. But we would be foolish to sup-

pose that our species having come to appear on this planet in atmospheric conditions that have remained relatively unchanged where the amounts of chlorine in the stratosphere and the amounts of ozone in the stratosphere are concerned during our existence on Earth as a species; that with our bodies fine tuned to the atmosphere and to the environment in which we evolved, that a sudden and radical change in an element as important as the radiation that we receive from the Sun would not cause damage?

Incidentally, Mr. President, this is a detail, but I think it needs to be known. They found that most of the sunscreens that people use to protect themselves against skin cancer from too much exposure to ultraviolet radiation do not protect against damage to the immune system. They have also discovered that skin pigmentation makes no difference whatsoever where damage to the immune system from ultraviolet B radiation is concerned. African-Americans, Hispanic-Americans, Asian-Americans, European-Americans—there is absolutely no difference.

Mr. President, the fourth damage that is done is to the food chain—to agriculture products, diminished soybean yield. That is the one that has been studied the most. Again the research is really just beginning on the damage done to corn, rice, and other important crops.

Perhaps most troubling is the damage done to the web of life in the surface layers of the ocean, phytoplankton at the very base of the food chain do not conduct photosynthesis at the same rate with extra ultraviolet B radiation. It is diminished by as much as 80 percent. That is what the little fish eat. And the little fish are what the bigger fish eat, and the bigger fish are what we eat. If the beginning of that food chain is damaged, then the consequences go up the food chain.

There was a conference at the University of Rhode Island this fall in which 325 scientists from around the world gathered to compare notes about a sudden catastrophe that they cannot yet explain. Algae blooms in every ocean of the world, much larger and more extensive than anything ever measured, with a much higher percentage of toxic algae bloom as a part of them than ever before seen.

One of the scientists there used the old cliche of the canary and the coal mine. You know that one. The miners take the canary down in the coal mine because when the canary dies that is time to get out of the mine because it means the concentration of harmful gases has reached the point where the canary cannot breathe, and that is an early warning signal. That is what these ocean scientists are saying about what is happening in the oceans now; could well be related to the extra ultraviolet B radiation.

But what I am most concerned about is my own backyard and the backyards of my constituents. At the local level, the hottest political issue these days is often where to put the new landfill, or where to put the new incinerator, because people feel like their backyards are threatened.

What is changing right now is the definition of "backyard." The entire global atmosphere is part of our backyard. It is in our backyard and when it changes, the air in our backyards change.

This Chamber, as I have said on numerous occasions, includes air that we are breathing right now that has 600 percent more chlorine atoms in each lungful than it did 40 years ago, a sign of the same compounds which are burning the ozone layer. That is true in my backyard and in your backyard, Mr. President, and in the backyards of every Member of this body, all of our constituents.

It is time to act. But it is time to act not just with respect to ozone depletion. It is also time to act before the crisis reaches its critical stage where global climate change is concerned. I do not want to be standing on the floor of this Chamber 10 years from now, after an utter catastrophe in the climate system has made the problem of climate change abundantly obvious even to George Bush, and make a similar speech to the one I am making today about ozone depletion.

I would like the President to act before the damage is done to Kennebunkport. I would like him to take the time to listen to what the scientists are saying, to put 2 and 2 together, to make the connection.

You know the old story about the frog. The frog is dropped in a pot of boiling water and it jumps right out. The frog is put in a pot of lukewarm water that is slowly brought to a boil and it just sits there until it is rescued because the frog's nervous system is so primitive it needs that sudden contrast before it makes a connection.

President Bush is like that frog. In some respects, our entire civilization is like that frog. We get signals from our global nervous systems, CNN news from around the world, but the process seems gradual so we just sit dead in the water. Now, with the potential ozone hole above Kennebunkport, the message is beginning to get through. Let us send that message today in strong, powerful, unmistakable language, and then let us follow it up with a similar message on global climate change.

Mr. President, I ask unanimous consent to add my distinguished colleague Senator WELLSTONE as a cosponsor, and I yield the floor.

The PRESIDING OFFICER. Without objection, the Senator will be added as a cosponsor.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I rise in strong support of this amendment offered by my friend and colleague from Tennessee and in strong support of everything he said in his statement today.

He has spoken, first, with authority. He knows this subject. He has taken the time to study the science. He has spoken with eloquence. But he has also spoken with a sense of justifiable outrage. And I say outrage because he knows the harm that ozone depletion and global warming is causing our climate and our people. And he feels frustration, as many of us do, that we are not using the tools at hand, we are not playing the role of responsible, moral leaders which we are given by the offices we hold to protect people from the harm that zone depletion will cause.

Mr. President, the Senator from Tennessee, in the words of the Bible, has today again "sounded a certain trumpet," and we should follow him into battle against these threats to our people. This is not a matter of politics. This is a matter of public health. And, in that sense, it should be a matter of interest beyond partisanship.

Mr. President, last December, I was privileged to Chair a hearing of the Subcommittee on Consumer and Environmental Affairs of the Governmental Affairs Committee on this subject of ozone depletion. It may be that some people here in Washington think that the public glazes over when they hear the term "ozone depletion." It seems literally far away and unrelated to their lives.

But I have news for folks here in Washington who think that. The public is ahead of the politicians. The public is ahead of the President when it comes to their understanding of the real danger that ozone depletion presents to them. They know that the Good Lord gave this planet a natural layer of protection of ozone to keep us safe from the harmful rays of the Sun. And that we humans by our own action unknowingly, up until recently, have sent chemicals into the air that like a hoard of dangerous Pac-Men are eating up that ozone layer and allowing the Sun to come through and affecting our health. Senator GORE has spoken clearly and eloquently about the dangers to us.

Let me just give you some of the numbers again that were given at this hearing. And these were numbers not from far-out groups. These were numbers from NASA scientists, from credible medical professionals at leading universities in our country. Given a 10-percent loss in the ozone layer by the year 2000—which every day that passes seems more and more to be a real and in some cases perhaps even a conservative estimate—by the year 2000 there will be approximately 250,000 additional

cases of skin cancer—skin cancer—each year. We can also expect an additional 4,000 deaths—4,000 people who may die prematurely every year for the next 50 years because of the threat that ultraviolet radiation will project because they are no longer safe because of the way in which we have depleted the ozone layer.

And there would be at least 1.5 million more cases of cataracts by the year 2000; 1.5 million cases—that is worldwide—of cataracts by the year 2000.

The Senator from Tennessee has talked about the work of Dr. Margaret Kripke, one of the world's leading experts on immune diseases. She came before our committee and warned us that there is increasing evidence that these unusual levels of ultraviolet radiation that are getting through are affecting the body's immune system.

Imagine what we are saying here. We are saying that the rays of the Sun, unfiltered by the ozone layer, can have an effect on people's bodies that is similar to AIDS, which has hurt so many of our fellow citizens.

Mr. President, it is time to act. This amendment calls on the President and this administration not only to lead the international effort to accelerate the deadline for the end of the use of these chemicals that are depleting the ozone layer and not be followers in the international effort, but it calls on the administration to follow the law.

The Clean Air Act which we adopted just a couple of years ago provides that EPA can make the phaseout schedule for ozone depleting chemicals more stringent if based "on an assessment of credible current scientific information, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment."

Mr. President, the new scientific evidence regarding ozone depletion right over my region of this country, New England, shows the clear and compelling need, and, in my opinion, legal obligation of EPA to act. This is just the circumstance that we in Congress contemplated when we enacted the new Clean Air Act.

My colleague from Tennessee has spoken of the allied problem of global warming. He talked about the refusal of the administration to act. I want to back up what he has said by presenting what is to me some startling evidence of how little the administration will tolerate in the way of action on global warming.

As part of this energy bill, the Senator from Colorado [Mr. WIRTH] who is on the floor now, and I, have prepared a simple amendment, virtually identical to one offered by Representative JIM COOPER to H.R. 776, the House energy bill, which was adopted unanimously on a bipartisan basis by the House Subcommittee on Energy and Power.

That amendment would have provided the Administrator of EPA with the power to establish a system for rewarding the good work of industries that voluntarily—and I stress voluntarily—either reduced their own greenhouse gas emissions or undertake programs to reduce emissions from other sources.

This was a simple amendment. It did not set goals or mandates. It did not establish timetables. It did not require reductions. It did not impose a requirement on firms to obtain credits or reduce emissions. But it did provide that good corporate citizens who voluntarily contribute to greenhouse gas emissions will have an opportunity to let the Government record their efforts at reducing those emissions in a data bank.

What happened? What did the administration say about that?

Unbelievably, to me, in a letter dated February 4, 1992—a few days ago—Energy Secretary Admiral Watkins wrote to the distinguished Senator from Louisiana, the chairman of the Energy Committee and said, "The administration is opposed to inclusion of language from a House subcommittee bill that would establish a voluntary certification and registration scheme for greenhouse gas reductions"—administration opposition even to a voluntary system to simply certify and record the good corporate citizenship of greenhouse gas emitting industries that act to reduce those emissions.

Today, we are preparing for a world global environmental conference, but as a result of this administration's adamant refusal to take action on carbon dioxide emissions, the United States remains isolated from Austria, Australia, Canada, Denmark, France, Germany, Italy, Japan, the Netherlands, New Zealand, Norway, Sweden, and the United Kingdom—all countries that have acted unilaterally to stabilize or reduce carbon dioxide emissions.

Unlike our administration, these countries are heeding the words of our experts.

The National Academy of Sciences, in its report, "Policy Implications of Global Warming" states:

> Despite the great uncertainties, greenhouse warming is a potential threat which justifies action now.

The Congressional Office of Technology Assessment has concluded:

> We cannot predict the magnitude of climatic effects from greenhouse gas emissions with accuracy. But it is clear that the decision to limit emissions cannot await the time when the full impacts are evident. The lag time between emissions of the gases and their full impact is on the order of decades to centuries; so too is the time needed to reverse any effects. Today's emissions thus commit the planet to changes well into the 21st century.

Let me give some examples of how that amendment would have worked and why I believe it is so critical to American business competitiveness and the environment.

Applied Energy Services is a company that is headquartered in the State of the distinguished Presiding Officer, Virginia, an independent power company which builds cogeneration facilities, mostly coal fired. One of those happens to be in Connecticut.

AES has adopted a very commendable voluntary corporate policy that offsets all new carbon dioxide emissions from their projects. They put this policy into effect by planting trees in a Guatemalan forest to offset its emissions that are coming from their plant in Connecticut. Unique, creative, and effective.

Under the amendment, after EPA issues guidelines, companies that undertake activities like AES will be given the opportunity to record their good work in a national registry. And on that day that the Senator from Tennessee has foreseen when the true impact of global warming is realized and we will probably mandate reductions, companies like AES will be able to receive credit for what they have done today.

To give another example, last spring, Mayor Bradley of Los Angeles announced that the department of water power in the Southern California Edison Co. had pledged to reduce carbon dioxide emissions by 20 percent by the year 2010 with at least half of those reductions to be achieved by the year 2000. That program would actually reduce carbon dioxide emissions by more than 40 percent when compared to the projected levels.

I would like to take just a moment to read a statement from the chairman of Southern California Edison when he announced this company's voluntary commitment because I think it is exemplary and indicative of what a lot of good corporate citizens are doing and can do to protect us from global warming.

"Taking prudent, reasonable economic steps to reduce CO_2 emissions is warranted by current scientific understanding of the potential for global warming. Our actions"—that is the actions of Southern California Edison—"are consistent with the recent policy recommendations of the National Academy of Sciences and we believe they make good environmental, scientific, and business sense."

Under the amendment that I hope to offer, along with the Senator from Colorado [Mr. WIRTH], Southern California Edison and the Los Angeles Department of Water Power would be able to record their good work with the EPA and be given credit for it in the future.

Mr. President, I believe that the amendment is essential to preserve American competitiveness as the United States begins negotiations over a global greenhouse gas reduction agreement.

It would have removed and would remove a significant disincentive facing American firms that seek to voluntarily reduce their greenhouse gas emissions who might feel that their present efforts would not be recognized; in some sense they would be penalized in the future for having acted now.

It is a reasonable amendment. Representative CARLOS MOORHEAD stated during the subcommittee consideration in the other body of this amendment:

As we all know, unfortunately we rarely reward companies for their environmentally-beneficial actions. And we should.

And that is why he supports this amendment.

Mr. President, I cannot understand why the administration would oppose the amendment. I hope they will change their position and allow us to take this small, voluntary step toward protecting our planet from global warming.

Let me take a few minutes to respond specifically to the Secretary's comments.

First, the House voluntary trading program does not give credits to companies that close U.S. plants and move offshore.

Second, the House proposal does not "enshrine," but instead leaves to DOE discretion to determine the "relative role of CFC's, sulfur dioxide, nitrous oxides, and carbon dioxide as influences on the climate system." The House proposal does not skew or lock in these relationships. In fact, the House bill's inclusion of all greenhouse gases was written in response to the administration's position that all such gases should be covered. The IPCC revision referred to in the letter contains more policy scenarios than the original document, some of which show more harm for certain gases and some of which show less harm.

Third, the administration's assertion that the House bill is an administrative nightmare seems to be a concession that DOE can't do anything efficiently. Is this the same administration that complained that congressional global warming proposals needed to include more gases, more sources, and more sinks?

In sum, Admiral Watkins concludes that the administration opposes the amendment because it wants to control global warming through the measures in S. 2166. Such a policy ensures that the United States will remain isolated from the rest of the world.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ROBB). The Chair recognizes the Senator from Louisiana [Mr. JOHNSTON].

Mr. JOHNSTON. Mr. President, first of all, if I may bring my colleagues up to date on this bill, we are going to press forward very hard all day today, into the night. I hope the majority leader will let us go late tonight, and tomorrow until our requisite 3 o'clock. And with cooperation by Senators, I think we can dispose of just about everything in the bill.

After this amendment is voted on—and there will be a record vote on the Gore amendment and I hope we can get to it immediately, because as I shall shortly say, the majority support it and I think it is ready to be supported. I hope we can vote immediately on the Gore amendment, then go to a Wellstone amendment, which we will accept. And I hope we can do so quickly. I would hope then that we could begin to deal with any contested amendments.

We are trying to get Senator METZENBAUM now to determine whether he is going to put in his amendment. I think we can see a possibility of light at the end of the tunnel on this bill.

So Senators who are holding back amendments, waiting to bring them up in the distant future, should be on alert that today is the day; that if amendments are going to be seriously pursued, they ought to be seriously pursued today.

I hope Senators will let us get on with it and begin to vote on these matters.

On the matter at hand, Mr. President, two things have been surprising about ozone. First, the speed at which it has deteriorated in the atmosphere and, second, the amazing ability of industry to respond to this great challenge. They have exceeded their own estimates and other peoples' estimates of how quickly they could accommodate to the tremendous challenge of dealing with this problem.

I am convinced that the Gore amendment is an appropriate resolution and that we should, in fact, speed that up. So, for this side of the aisle, Mr. President, we accept the amendment. I ask unanimous consent that I be included as a cosponsor.

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

Mr. JOHNSTON. Mr. President, have we asked for the yeas and nays on this amendment?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. WIRTH. Will the Senator yield to me?

Mr. JOHNSTON. Yes.

Mr. WIRTH. Just in talking about the schedule, is it the distinguished chairman's understanding we can finish the bill altogether today and have final passage today or tomorrow?

Mr. JOHNSTON. I hope that we can dispose of everything except the ANWR amendment and have a unanimous consent that would sound something like this: That there be an ability to bring up the ANWR amendment under a time limitation, with an ability to have it up or down or a tabling of the amendment and, if it is agreed to, the bill be open to further amendment and filibuster; and if it does not, we go immediately to third reading. In other words, close everything else out except that. Frankly, I hope after the recess that would go away.

Mr. WIRTH. Why can we not finish the bill tomorrow? Why can we not get it done before we leave?

Mr. JOHNSTON. Perhaps we can do that.

Mr. WIRTH. Is there a reason we cannot dispose of everything this week?

Mr. JOHNSTON. Only the Senators from Alaska say they want to get home and have an opportunity to discuss ANWR with their constituents. I hope when they discuss it with their constituents, their constituents will say do not try to put it on this bill. So, in other words, in effect, the bill would be finished because ANWR is not going to pass as part of this bill.

Mr. WIRTH. There is no way that they would understand that this week so we can get this finished?

Mr. JOHNSTON. I would hope so, but not yet. The point is, we can see the possibility of finishing this bill either late tonight or tomorrow if we stay on it and do not debate the economy and a lot of other things and proceed to vote.

Mr. WIRTH. I thank the chairman.

The PRESIDING OFFICER. The Senator from Wyoming [Mr. WALLOP].

Mr. WALLOP. Mr. President, let me say to the distinguished chairman of the Energy Committee, my friend, BENNETT JOHNSTON, that I, too, hope that we can get on. Mr. President, we are not going to get on if every amendment comes in here with a Presidential campaign speech. There is either a logic or there is not a logic. There is either going to be an energy bill or a new Clean Air Act. But it is unnecessary, Mr. President, and indeed unsuited to the occasion, to make all-out assaults on the President of the United States when the President of the United States has embraced as policy the effects of the amendment of the Senator from Tennessee.

I just wondered, Mr. President, how long it was going to take before we heard the first Presidential campaign speech from the Senator from Tennessee. I wondered if it would have any substance. I find that the substance of it is that he attributes everything to George Bush, including the expanded rate of AIDS.

He speaks of the ozone depletion being responsible for red tide. Perhaps he has forgotten that the red tide was in Biblical times. In my State, Mr. President, there is an old sea, which is now called Fossil Butte National Monument. The sea is empty. And long before Americans were here polluting the environment, somebody drained the ocean there. There used to be palm trees, alligators, bats, and all kind of things. There remains fossils of red algae.

What we are hearing is mindless support of action without regard of effect or cost; no science or pseudoscience; a tale of horror; AIDS, lupus indeed.

There is going to be a temptation to change the energy bill into a new Clean Air Act. Mr. President, the Senate should resist that temptation. What the Senate should focus on is what the Senator from Louisiana and I have tried to bring to the Senate, a broadly based, package of energy needs of America today and in the future. We have sought to do that. The Environment and Public Works Committee has jurisdiction over environmental legislation. The Environment and Public Works Committee passed George Bush's Clean Air Act last year.

Let us just talk about some of the things that have taken place and set the record straight a little bit, because the administration sent me a message this morning that they embraced the sense-of-the-Senate resolution of the Senator from Tennessee because it is an iteration of administration policy.

I know I am going to hear a little response and I know I am going to hear a new assault, because it is a campaign year. It seems odd that maybe the Senator from Tennessee maybe would not be able to take yes for an answer. But let me set some of the record straight.

President Bush was one of the first world leaders to endorse the total phaseout of CFC's by the year 2000. The United States was the first nation to actually legislate, in President Bush's Clean Air Act, the complete phaseout of CFC's. The United States was the first nation to actually pay into the Montreal protocol fund to help the lesser-developed countries to meet their obligations. And, Mr. President, I wish the Senator from Tennessee would give this speech in Brussels because most of the G–7 countries have yet to contribute.

The United States has already reduced CFC emissions by 42 percent just in the last 2 years, far ahead of the international required schedule.

The United States enacted in the 1990 reconciliation bill, in the fall of 1989, a tax on CFC production of $1 a pound. No other country, Mr. President, has done this. That—a Bush proposal—is what put us ahead of schedule on the phaseout.

It is also critical to get other countries to sign up to the phaseout under the Montreal protocol. For example, India, one of the world's largest emitters of CFC's, has yet to sign it. China has yet to sign it. Europe is meeting its initial obligations to phaseout under the protocols by phasing our aerosols, but that is something the United States did in 1978, Mr. President. The administration, in the face of science, is already considering speeding up the Montreal protocol time schedule.

But let us remember that America has done more than anyone else, and it is unfair and unseemly for the Senator from Tennessee to make big speeches as though the President has done absolutely nothing. Now, he may not agree with the rate at which the President has done things, and that is his right. But to accuse the President and accuse our country of inaction when our conferees in the Common Market, EC '92, and others lag behind us, when other countries, great emitters, lag behind us, when we are already contributing where our G–7 partners are not, is simply an unfounded accusation of inaction.

Mr. President, I repeat again that we will not soon get to votes on things like this if we have to hear campaign speeches, because they will be contested. I also say again that the message I got this morning was for us to embrace the concept of the sense-of-the-Senate resolution of the Senator from Tennessee. Perhaps he would see fit now to take yes for an answer and leave the politics of the campaign year to the streets and the television sets outside.

Mr. President, I yield the floor.

Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Tennessee [Mr. GORE].

Mr. GORE. Mr. President, first of all, let me reaffirm my fondness for the Senator from Wyoming. He and I have been friends for a number of years now. We have worked together on these issues, and worked against each other on these issues occasionally. We worked together and occasionally against each other on arms control.

My fondness for my colleague from Wyoming is, indeed, undiminished, and I want him to know, Mr. President, that I understand he does not mean his criticism personally, and what might sound to some like an ad hominem examination of my motives in speaking on the Senate floor is simply the Senator's manner and should not be interpreted as an attack on me personally. I certainly do not interpret it that way.

I genuinely enjoy my working relationship with the Senator from Wyoming. I have some hope, Mr. President, that the support of this amendment by the Senator from Wyoming is a harbinger of his potential willingness to support other measures which will be forthcoming and which will also be considered for a vote in the months and years ahead in this Chamber.

I do want to reassure the Senator from Wyoming, if assurance is needed, that his references to a Presidential campaign speech are wildly inaccurate. Perhaps the Senator does not know, but I am not running for President. I have made that announcement. I have had zero second thoughts about that announcement. I made that decision not for political reasons but for personal reasons which were and are varied.

I am flattered, I suppose, that the Senator from Wyoming would think the issue which is brought to this Chamber this morning is one which falls into the orbit of Presidential campaign issues. I have tried for a long time to elevate these issues into the status of issues debated at the Presidential campaign level. I used to be the next President of the United States, I would say to the Presiding Officer, so I know a little bit about Presidential campaigns. But I am not in a Presidential campaign, nor do I have any intention of getting in a Presidential campaign.

If the Senator from Wyoming believes that I need to have in the back of my mind a Presidential campaign in order to feel the passion that I bring to this issue, the Senator is mistaken. The passion I feel on this issue comes because I see what is happening to the global ecological system, and I see the need for leadership by the United States of America, and it is not forthcoming.

Now, all of this can be sugar-coated; all of this can be portrayed in a variety of different ways. But this is no secret about the fact that 3 months ago when this same amendment came to the floor of the Senate, the Republican Senators stopped this amendment, and there is no secret why they did it. George Bush said: Stop the amendment. We do not want it debated; we do not want it voted on; we do not want it to pass.

That is no mystery, absolutely no mystery whatsoever. This is not politics. This is about the single most important issue facing this country and this Earth.

Now, the Senator from Wyoming made some other statements, and I am going to cover them briefly. I know the Senator is ready to roll on the vote, and I am ready, too, but I cannot let all of it pass without just a brief response.

The United States has taken steps on this. I referred to a number of them: the Montreal protocol and the London amendments. But you know what, Mr. President? President George Bush was dragged kicking and screaming every inch of the way. The record is pretty clear. This is not a mystery.

The Senator from Wyoming referred to our contribution to the Montreal protocol fund. Will my colleagues remember some of the speeches I made here about that fund at the time that decision was made. I will be glad to point to the references in the RECORD.

Twenty-four hours before the critical meeting, countries from all over the world served notice that the entire Montreal protocol was going to be completely disbanded because one nation, the United States of America, refused to take the step every other developed nation had announced they would take, and that is to contribute to that fund.

Twenty-four hours before the meeting, John Sununu and President Bush still had dug in their heels. Twelve hours before the meeting, finally the White House relented and the protocol was saved after political pressure here in this Chamber and in the other body and from the American people.

Yes, this is a political issue all right, and it ought to be a political issue. The President of the United States had the hutzpah to say he was going to be the environmental President. What guffaws that claim now generates. In the other Chamber last week, when he gave his State of the Union Address, did we hear anything about this? Did we hear the word "environment" once? No. The environmental President did not bring up the subject until the ozone depletion above Kennebunkport was discovered.

Now, the Senator from Wyoming also said that no other country has done more than we have. With all due respect to my colleague, it is simply not true. I will put into the RECORD a list of countries that have gone much further than we have and have called upon us to do the same. I would include on other occasions speeches in the RECORD from Prime Minister John Major, Margaret Thatcher, President Mitterrand, President Kohl of Germany, and others who call upon the President of the United States to lead.

Just 2 weeks ago, there was a meeting in Tokyo where the Japanese Government met with representatives of the United States Government, and President Bush's representative said about global climate change: We are not going to do anything, because we do not think the evidence justifies it.

One other point, just as a matter of clarification. The Senator from Wyoming said India and China have not signed. Both India and China have said they are now prepared to sign, but they have only imposed one condition, and that is that 20 nations ratify the London amendments in the Montreal protocol. We are up to 17 in the world now, and it will be a matter of months only when their approval does occur.

Mr. President, I am prepared to go for a vote. I know the chairman wants to do it. I know that others here had wanted to speak. It is OK with me to just go ahead for a vote, and I hope this really will be a bipartisan vote.

Mr. WIRTH and Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Colorado [Mr. WIRTH].

Mr. WIRTH. Mr. President, I thank the Chair very much. I do hope we move to a vote very quickly, but I do not want to leave much of this discussion to go unattended.

Just an aside, I would note, Mr. President, that I am sorry the Senator from Tennessee is not running for President. I think his passion, his concern, and his capacity to bring to the attention not only of our colleagues here but to people all across the country, and increasingly all across the world, the size and scope of this set of issues that endangers the globe in the most fundamental way would be an enormous contribution.

Unfortunately, that contribution is not being made, in my opinion, Mr. President, not only not by President Bush but, unhappily, not in a very aggressive fashion by candidates on our side either.

I am disturbed that this has not been a front and center part of the national and international debate as it should be. Everybody in this Chamber has talked about the fact that the cold war is over. Everybody has talked about, in some language, the New World Order, in other language, the transition and changes that we have to make. I heard only the other day a very good speech on the other side talking about the fact that our international security was no longer going to be defined in military terms; absolutely not.

On what terms is our international security going to be defined? It is going to be defined on economic grounds, and it is going to be defined on environmental grounds. The faster we make an understanding of that transition and that gets reflected in American policy, the better off we are going to be and the better off the world is going to be because the world is looking to the United States for leadership.

Unhappily, that kind of leadership has not been forthcoming in the kind of aggressive fashion that the Senator from Colorado would like to see and I know the Senator from Tennessee would like to see and, I believe, Mr. President, that an increasing majority of the American public wants to see.

I wanted to make a comment or two not only on what kind of leadership is expected from the United States and is not forthcoming—and I say we are delinquent, I believe, on both sides of the aisle. The institutions of our Government have not caught up to the reality of the world, not only on the environmental issues, but economic issues and so many others ones.

No wonder people out there are frustrated with what we are doing. No wonder there is an enormous amount of anger and questioning as to whether this system works, the system that we are seeing right here in the U.S. Senate. People do not see this moving with the kind of speed and urgency and sense of indignation that it ought to move.

But more importantly than that, Mr. President, what is at stake on this issue, I think what we should all focus on is that this sense-of-the-Senate resolution vote is in many ways a metaphor for all the problems that are going to be coming right after that we have seen on the ozone because of our inability or unwillingness to act more rapidly to phase out CFC's more rapidly, and to recognize the surprise that we saw with the discovery of the hole in the ozone in the 1970's.

The fact that we have been so slow in moving means that we get to this kind of a crisis. I hope we view it as the sort of helpful metaphor that it ought to be because this is just the start of a number of other surprises that are on their way in terms of the global environment.

Those are surprises that are going to be related to global climate change and the burning, the carbon dioxide, surprises that we are going to see in deforestation, surprises that we are going to see in the collapse of species—we are seeing that again—surprises we are going to see in terms of what is going on in the resources of the ocean, and maybe most dreadful of all surprises that we are going to see with this vast increase of population and our unwillingness in the United States to address that issue.

These surprises are going to continue to come. What has happened on the ozone is a metaphor that we should all beware. We waited and waited and waited, and, suddenly, the hole grew dramatically and we were alarmed. Maybe we could do something about this one, maybe we can do something about it, by moving on the schedule suggested by the Senator from Tennessee that we ought to be doing in this country.

What about the other issues that are out there that we cannot repair? We cannot repair global climate change. We cannot repair the destruction of species. We cannot repair this rapid growth of population. We cannot fiddle while the globe burns.

This is a metaphor for all of those other issues, and we should understand it as such.

It is a relatively harmless Senate resolution. I am pleased that we are all supporting it on either side.

But let people note what this really means. This is a symptom of a deeper problem, and the faster we come to understand the importance of it, the better off we are going to be.

I yield the floor. Thank you.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the majority leader [Mr. MITCHELL].

Mr. MITCHELL. Mr. President, I commend Senator GORE for this resolution. I encourage all Senators to vote for it.

This resolution is the same text as Senate Resolution 95, which was reported by the Foreign Relations Committee last year. We were unable to clear it for floor action last year. I am pleased that we are going to be able to get approval of it here today.

This resolution calls on the EPA Administrator to exercise his obligation to accelerate the phaseout of ozone-de-

pleting chemicals based on credible data to protect the public health and the environment. That is required of the Administrator under section 606 of the Clean Air Act.

Last year, I called upon the Administrator to exercise that authority repeatedly and publicly. He refused. This resolution, if adopted, will put the Senate squarely on record as calling for the Administrator to do that which, I believe, should have been done last year and I hope will be done soon.

Although we are advised that the administration now supports this resolution, we still do not have a commitment to any specific course of action or any date for a phaseout by the administration. I hope that will be shortly forthcoming. We must act. This is a very serious problem.

We confront the prospect of extraordinary and potentially very dangerous damage to the ozone layer over densely populated areas in our own country. It so happens that, by coincidence, the problem is dramatically illustrated now by a vortex hovering over Maine. It may be over Maine now, but the scientists made clear it could affect other areas of the United States much more densely populated as well as areas in Europe.

We have known about this for some time. The recent NASA report is merely confirming evidence of what we have known previously in a more dramatic manner, but it is not new evidence. It is cumulative evidence on top of that which we have had for some time.

This action is overdue. I commend the Senator from Tennessee for his effort in this area and for bringing this resolution forward. I hope now we can have a strong vote and prompt action by the administration on a specific course of action and a commitment on a specific date for a full phaseout.

Mr. President, I thank my colleagues.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming [Mr. WALLOP].

Mr. WALLOP. Mr. President, let me begin by showing the Senator from Tennessee that it was not an ad hominem act on him; it was a protest of his attack on our President, and it was the method, not the man, that was the object of my scorn.

Mr. President, there is something that needs to be observed about America, that among the family of nations, America more than any other takes seriously the obligations that it undertakes. It is well and good for a speech from Prime Minister Major or Chancellor Kohl, well and good for them to come and embrace the Montreal protocol and other things. But it is essentially this Nation that puts its behavior where its pen of adoption has been.

It is therefore wise for a nation such as ours to pursue with prudence the commitments it makes in the public body; one, to be certain that they can, and, two, to be certain that they are wise, because whether they are wise and almost beyond our reach, we will strive to meet them.

That just happens to be the way America is. It does not happen to be the way most of the other nations in the world are. They suit their international agreements by domestic politics, by convenience, and by international politics. But this Nation has a habit of taking itself and its obligations seriously.

So we exercise caution, even though I still say to my friend from Tennessee that it is my belief that we by far lead the behavior, not the rhetoric, of other nations.

But when we undertake new obligations, publicly announced and embraced, they ought to be ones which have both means of deliverance and the possibility of deliverance.

It is my judgment that that is what the administration has done, and it is my judgment that that is why they have no objection to this amendment.

So lest we pay some respect to the behavior of this country in international circles, maybe we can set aside some of the politics and embrace what the administration has said, which is that it is fully supportive.

I yield the floor.

Mr. DOMENICI. Mr. President, I would like to comment on the amendment submitted by Senator GORE on stratospheric ozone depletion. The new scientific data that shows that the ozone could be disappearing at a rate of 2 percent per day over the Northern Hemisphere this winter, should have brought us all together, with the administration, to respond to this threat. I am therefore very sad to hear that the Senator from Tennessee [Mr. GORE] took this opportunity to attack the administration. I do agree with the Senator on the scientific issues. In fact he and I were some of the first in the Senate to worry about ozone depletion—now we all do. But I must take exception to his characterizing George Bush as dragging his feet when in fact, he is about to take many of the steps outlined in this amendment. This issue is too important to us, and to our grandchildren, to be used for partisan attacks and I hope in the future we in the Senate can work together with the administration to develop scientifically sound environmental policy.

GORE AMENDMENT ON CFCS

Mr. BIDEN. Mr. President, for those in the administration who saw ozone depletion as a faraway problem for others to solve, recent findings by NASA have shattered that false sense of security. NASA has found exceedingly high levels of the chemicals that destroy the ozone above the North American continent.

Earlier findings of ozone depletion were enough to galvanize world support behind a remarkable agreement to reduce the production of many of the chemicals that destroy the ozone. But as impressive as that effort—the Montreal protocols—is, the recently reported findings show we must go much further. That is why I supported Senator GORE'S amendment calling for the President to lead efforts for further reductions in ozone depleting chemicals.

Gone are the days when administration members could seriously propose hats and sunglasses as a response to ozone depletion. The public knows the risk to the global environment and to their health. And perhaps more important, they know that they must take steps now to reduce the risk to future generations.

The single most crucial element in any further tightening of the terms of the Montreal protocols is the leadership shown by the U.S. President. If he waits, the world waits. When he acts, the Nations of the world will follow. Senator GORE'S amendment shows the Senate's hope that the President will not await the leadership of others on this problem.

I ask that copies of two articles describing the NASA findings from the Washington Post be reprinted at the conclusion of my remarks.

As one of the scientists involved in the study noted, ozone depletion is a legacy of our times that will remain long after we have gone. But a worse legacy would be to ignore the findings that have come before us and fail to act. It is imperative that the President start today the process of protecting the health of future generations.

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

[From the Washington Post, Feb. 4, 1992]

OZONE-HOLE, CONDITIONS SPREADING: HIGH CONCENTRATIONS OF KEY POLLUTANTS DISCOVERED OVER UNITED STATES

(By Kathy Sawyer)

The danger that a new ozone "hole" could open over densely settled areas of the Northern Hemisphere, exposing the population to increased amounts of harmful radiation, is greater than previously suspected, scientists reported yesterday.

New indications of ozone depletion by NASA satellite and multiagency airborne instruments are so alarming, the scientists said, that they decided to release them before completion of the data analysis in late March.

Two weeks ago, detectors aboard a converted spy plane flying over New England and eastern Canada recorded the highest level of the ozone-destroying chemical chlorine monoxide ever measured anywhere around the globe. The level—1.5 parts per billion—was approximately 50 percent greater than any previously seen over Antarctica, the site of the infamous ozone hole first discovered in the early 1980's.

Chlorine monoxide, which results from the presence of man-made chlorofluorocarbons (CFC's), is a potent ozone-destroyer by itself. And when combined with small amounts of its chemical cousin, bromine monoxide—which the NASA researchers also found at

elevated levels—the effect is enough to destroy ozone at a rate of about 1 or 2 percent per day for brief periods in late winter, said Michael Kurylo, NASA's program manager for the airborne studies.

Ozone in the stratosphere protects the Earth's surface by absorbing much of the ultraviolet radiation that causes skin cancer, cataracts and immune-system damage in humans and devastates many microscopic marine organisms.

Weather conditions permitting, ozone over parts of the Northern Hemisphere could be depleted by 30 to 40 percent, the scientists said. By comparison, about 50 percent of the ozone has been depleted from the ozone hole over Antarctica.

To emphasize how ozone-destroying chemicals have become widespread over populated areas, Kurylo described the experience of the science investigators' flights out of Maine. "There were some flights directly out of Bangor where the aircraft encountered these parcels [of chlorine gas] before it ever got to operating altitudes."

In addition, researchers found evidence of reduced concentrations of nitrogen oxides in the lower stratosphere. Nitrogen oxides help preserve ozone by reacting with chlorine and bromine compounds before they can damage the ozone layer.

"Our conclusion is that the 'immune system' of the atmosphere"—its nitrogen-mediated ability to fight ozone-destroying chemicals—"is weaker than we had suspected before," said James G. Anderson of Harvard University, lead scientist for the airborne observations program. "None of the news is good."

Ozone-depleting compounds in the stratosphere from the Arctic as far south as the central Caribbean were found to be much more abundant than computer analyses had predicted. Part of this is a result of the eruption of Mount Pinatubo in the Philippines last June, the scientists said.

The new observations, including some from NASA's new Upper Atmosphere Research Satellite (UARS), suggest that the chemical processes that apparently work to deplete ozone throughout the atmosphere are not confined to the polar areas, where conditions are more conducive to ozone destruction.

The Antarctic hole was discovered in 1985. Concern has grown since then that Earth's ozone shield is being destroyed by human industry, primarily by the release into the atmosphere of CFCs used as refrigerants, thermal insulators and in cleaning solvents. These break down into chlorine atoms or compounds, which interact with and destroy ozone.

Ozone is a form of oxygen whose molecules contain three oxygen atoms instead of the usual two—a configuration that gives ozone its peculiar ability to filter ultraviolet rays from sunlight. But highly reactive chlorine or bromine compounds, atmospheric scientists believe, snatch one of the oxygen atoms away. The remaining two-atom molecules of ordinary oxygen cannot block ultraviolet radiation.

How severely the ozone is depleted depends on weather conditions, especially the size and duration of the so-called polar vortex—a supercold mass of air penned in by high winds swirling around it. When the air is cold enough inside the vortex, ice particles form. These, along with liquid droplets, provide platforms for the ozone-destroying chemical reactions, which are triggered by sunlight.

The vortex over the Arctic is more broken, because of turbulence caused by surrounding mountains, than is the one over Antarctica, scientists noted. The greatest danger of high ozone loss—a "hole"—over the Arctic will occur when the vortex there remains intact until late February, according to Kurylo.

Based on an estimated 10 percent ozone loss in mid-latitudes during the 1990s, a panel of the United Nations Environment Program reported in November that increased ultraviolet radiation leaking through the ozone layer by the turn of the century could cause 1.6 million additional cases of cataracts and 300,000 additional skin cancers a year worldwide.

Most nations have agreed to phase out CFCs by the year 2000, but some potential replacements also involve ozone destroyers.

The new findings yesterday moved Sen. Albert Gore Jr. (D-Tenn.) to introduce new legislation that would speed the phase-out of ozone-depleting chemicals.

A NASA official compared the decades of buildup of ozone-destroying chemicals to the way a head of foam forms on a glass of beer. The chemicals rise through the lower atmosphere and bubble into the stratosphere.

Scientists noted that, once in the atmosphere, the ozone destroyers are very persistent. Even if CFCs were phased out at once, said Kurylo, to restore the ozone layer to its former health "would take until 2060 or 2070. . . . This legacy will be with us for a long time."

[From the Washington Post, Feb. 6, 1992]

UNITED STATES MAY SEEK TO HASTEN ACTION TO PROTECT OZONE: SIGNS OF ATMOSPHERIC DAMAGE ALARM OFFICIALS

(By Michael Weisskopf)

The Bush administration, alarmed by new forecasts of a growing ozone "hole" over the Northern Hemisphere, is likely to push for a speedier phaseout of the most ozone-damaging chemicals at a diplomatic meeting in April, officials said yesterday.

Under terms of an international treaty called the Montreal Protocol, the United States and other industrialized nations have agreed to halt production of ozone-destroying chlorofluorocarbons (CFCs) by 2000. The goal is to patch up the vaporous veil of molecules high above the Earth's surface that screens out much ultraviolet radiation, which can cause skin cancer.

But Environmental Protection Agency Administrator William K. Reilly said yesterday that in view of new data projecting greater ozone loss than anticipated, U.S. officials are nearing agreement on a plan to accelerate the CFC phaseout deadline by three or four years.

If U.S. representatives offer such a plan at the April meeting of treaty signatories in Nairobi, it would signal a more aggressive U.S. stance on global environmental issues. After taking the lead in negotiating the 1987 pact on CFCs, the federal government under President Bush has agreed to stronger measures only after initial resistance. The European Community has pledged unilaterally to stop CFC production in July 1997.

But any new U.S. initiatives will be made easier by industry's unexpected alacrity in finding CFC substitutes, which have been in development for years. Cheaply and easily produced, they are used in countless consumer goods—coolants for air conditioners, gases for shaping foam products and solvents for computer chips.

Major users of CFCs are in the process of converting to less ozone-depleting substitutes, a process they expect to complete as early as January 1996 for new products, according to industry spokesmen. Substitutes are three to five times as costly, but they account for only a fraction of the price of finished goods.

"There are encouraging signs in industry that allow us to end CFCs more quickly," said a senior official.

Plans for a faster timetable are under review by an interagency group headed by presidential science adviser D. Allan Bromley. A meeting was held Monday after NASA researchers reported that satellite and airborne measurements taken over North America recorded the highest level of ozone-depleting chemicals ever detected worldwide.

"The NASA data are worrisome and create an added urgency to phase out these chemicals," said Reilly in an interview. "The president feels strongly about phasing them out earlier than the year 2000."

Speeding up the phaseout by four years would have a marked impact, according to a new analysis by the United Nations Environmental Program. Total atmospheric levels of chlorine, released by CFCs as they rise into the stratosphere and come under intense bombardment by solar rays, have increased from 2 parts per billion (ppb) in the late 1970s to 3.5 ppb today, the EPA estimates.

Chlorine levels are expected to reach 4.1 ppb under the current timetable, then gradually fall to 2 ppb by the year 2060. Eliminating CFCs four years earlier, however, would cut the peak to 3.87 ppb, according to the U.N. analysis.

Administration officials said a faster phaseout by industrialized nations is necessary to set an example for the Third World. The Montreal treaty permits a 10-year grace period for less-developed countries, which are eager to exploit the chemicals to provide more consumer goods. Those nations now account for 15 percent of world CFC production, but that percentage is expected to rise as richer nations phase out. India and South Korea, among developing nations, have not signed the treaty.

With U.S. industry fast converting to less depleting substitutes, the nation has cut its CFC production to 58 percent of the 1986 baseline used in the treaty, according to Kevin Fay of the CFC Alliance of industrial users and producers.

Fay said the industry supports a faster phaseout of CFCs for new products, but remains concerned that the chemical be available to service the 160 million home refrigerators and air conditioners, 80,000 office building chillers and 130 million auto air conditioning units that now run on CFCs.

Existing equipment using CFCs is valued at $135 billion, Fay said.

"Industry is doing everything it can to minimize emissions of the compound," said Fay. "Some speedup is possible. The real issue is the impact on consumers and small-business owners with existing equipment."

OZONE DEPLETION

Mr. SIMPSON. Madam President, we are considering an amendment dealing with a very important environmental and health issue today—ozone depletion.

This issue involves possible health effects for the entire population of the planet. The scientific knowledge about ozone depletion is well documented.

The ozone depletion issue is much different from the global warming issue in that regard. Ozone depletion is a well established scientific fact while global warming caused by manmade emissions is only a theory.

For that reason I can support the Gore amendment. We should take more rapid action to protect the ozone layer. We should accelerate the phase out of CFC's. Fortunately we can take this action without causing economic problems because CFC substitutes have been developed which do not deplete the ozone layer.

Ozone depletion is a public health issue and it deserves special attention. In contrast global warming is an issue in dispute. Scientists do not agree that manmade sources will cause large scale climate change. Politicians and environmental groups who support drastic action to reduce CO_2 often have a hidden agenda. They seek to whip up public fear about a problem that is not well documented and they propose actions that may have grave consequences for our economy. While we will take decisive action with regard to ozone depletion we should exercise caution when contemplating action on global warming.

I would say that I am a bit troubled by those who would use this issue to bash the President. There are some who would portray themselves as the sole protectors of the Earth. These individuals often engage in partisan shrillness in an effort to paint the President as "hiding his head in the sand" with regard to the environment. Nothing could be further from the truth. If it had not been for President Bush we would not have passed landmark clean air legislation last year that provided authority for the EPA Administrator to accelerate the phase out of CFC's. This fact is often ignored by those who are the most ardent critics of the President. George Bush cares about the environment and he has always promoted common sense environmental policies on ozone depletion and many other issues.

THE OZONE DEPLETION AMENDMENT

Mr. HOLLINGS. Mr. President, I rise today in support of an amendment to S. 2166 which calls for the accelerated international phaseout of ozone depleting chemicals. I think that the importance of ozone depletion and other global environmental problems was really hit home for me back in 1988. I was far from home—in Antarctic temperatures that were 30 degrees below zero—looking at an ice core from the Newell Glacier. The ice core was about 18 feet long and had been laid down over hundreds of thousands of years. Researchers were studying each millimeter of its length, and pointed to tests indicating the presence of manmade chemicals in the ice laid down within the past 20 or 30 years.

That ice from a desolate Antarctic glacier proves silent evidence of the potentially far-reaching impacts of human pollutants released many hundreds of miles away. It shows the need for viewing the Earth as a complex, interdependent system, in which oceans, atmosphere, and life all affect one another and all help shape the face of the planet. And, it is one of the Earth's loud and clear warning signals that its ability to sustain human life may face a long-term threat.

Exactly 2 years ago today, the Senate passed a bill that I sponsored calling for a national plan to get the facts and improve our understanding of global change. Today's unanimous vote in support of an accelerated phaseout of ozone-depleting chemicals, shows why that legislation was so important. If we are to deal with global environmental threats, all Americans—consumers, businessmen, and Federal managers—will be faced with tough decisions that will hit us squarely in the pocketbook. But our response thus far has been a little like the wealthy man who speaks out loudly in support of worthy causes—but when the collection plate is passed, he finds that he has left his wallet at home. Once we are convinced of the worthiness of the cause, it becomes far more likely that we remember our wallets.

Today's vote comes after the presentation of clear and compelling scientific evidence that ozone depletion is far more widespread and occurring at faster rates than researchers had expected previously. The new information convinced the U.S. Senate, and I am optimistic that it will convince the Bush administration and the rest of the world about the urgency of eliminating ozone-depleting chemicals.

STRATOSPHERIC OZONE DEPLETION

Mr. D'AMATO. Mr. President, I rise today to explain my support for the amendment that deals with an issue which should be a concern to all. I am talking about the ceaseless deterioration of the ozone layer. It is our principle protection against the harmful effects of the Sun. Research shows that it is being destroyed at an alarming rate, and if something isn't done to impede its deterioration, we will all suffer the consequences.

The amendment, authored by the Senator from Tennessee, is a thoughtful, reasoned step in the preservation of the ozone layer. The sense-of-the-Senate resolution, calls for the acceleration of the scheduled phase out of production of ozone-destroying substances by Administrator of the Environmental Protection Agency. It also calls on the President to urge the United Nations to call for a special meeting of the contracting parties to the Montreal protocol so that they may also accelerate their scheduled phase out of such substances. Lastly, the amendment urges the Administrator of the Environmental Protection Agency to issue regulations allowing for the recycling of ozone-destroying substances contained in household appliances and automobiles.

Mr. President, now I am not the foremost expert on the effects of chlorofluorocarbons, carbon tetrachloride, and other chemicals on the ozone. What I do know is that I supported the Clean Air Act Amendments of 1990 to stop the threat of increased skin cancer, cataracts, and crop depletion, from increased amounts of ultraviolet rays coming through a thinning ozone layer.

Recent newspaper articles warned of the possibility of an ozone hole opening up later this winter over the Northern Hemisphere. It seems clear to this Senator that we need to accelerate efforts to end the threat to the atmosphere and to the citizens of this planet.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to amendment No. 1570, offered by the Senator from Tennessee.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from West Virginia [Mr. ROCKEFELLER] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Alaska [Mr. STEVENS] is necessarily absent.

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

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 19 Leg.]

YEAS—96

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

NAYS—0

NOT VOTING—4

Harkin	Rockefeller
Kerrey	Stevens

So the amendment (No. 1570) was agreed to.

Mr. CHAFEE. I move to reconsider the vote by which the amendment was agreed to.

The PRESIDING OFFICER. Without objection, the motion to lay on the table is agreed to.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I have had my differences with the President on some environmental matters, but I want to take exception to some of the comments that were made on the floor this morning. I regret that I was not here to be able to rebut those charges made earlier and now would like to take the opportunity to do so.

I am a cosponsor of this resolution that was just agreed to. And it was agreed to, I believe, unanimously, 96 to nothing. So the resolution was all right, a fine resolution.

But I understand that, based on that resolution, then my cosponsor went on to make some other charges that I believe are highly inaccurate.

Mr. President, let us just talk a little bit about the ozone hole in the sky, the hole in the ozone layer.

Mr. President, I want to say this: President Bush has been the only President—the only President—to sign a bill dealing with the primary agent that destroys the ozone layer, CFC's, and the President did that and, indeed, the legislation that the President signed went way beyond just CFC's.

I will refer the Chair and the Senate to item 5 of the resolution we just agreed to. That said that the President should urge the contracting parties—namely, those who signed the Montreal protocol—to include hydrochlorofluorocarbons within the terms of the Montreal protocol.

Now, our legislation, the legislation that President Bush signed, has that very provision in it. The other nations have not signed and have not passed legislation dealing with hydrochlorofluorocarbons; the United States has.

So I think we ought to recognize that and be proud of it.

Item No. 6, this resolution urges the contracting parties to amend the protocol to include recapture and recycling provisions. The U.S. legislation does that. We passed that all in connection with the Clean Air Act.

So it seems to me rather strange, Mr. President, that on the floor of this Senate there are attacks on the President of the United States in connection with our position to protect the ozone layer. Any suggestion that President Bush has been dragging his feet or holding up international progress is just plain wrong. We are on track to strengthen the Montreal protocols, and the United States has been a key player in that. There is a negotiation session scheduled for April. Here we are in February, coming up in April in Nairobi, and a formal diplomatic meeting set in November in Copenhagen.

Mind you, Mr. President, there are a slew of nations that signed this. This is not something we can do tomorrow. This takes a lot of work. But no nation has been more in the lead in connection with doing something about the depletion in the ozone layer than the United States, and the President, as I understand it, is willing to lead the charge for these strengthening amendments that I just referred to.

Now let us just touch on the second charge, namely, global climate change.

Well, Mr. President, it is too early to judge President Bush on that subject. It is true, to date, the administration has been lagging behind other nations. But we may be on the verge of a major breakthrough. The administration has been negotiating with other nations on this and is going to resume those talks on February 18—2 weeks away—in New York City. And I am hopeful that the President will endorse new and progressive positions at that meeting. Until that meeting however, it is simply too early to judge President Bush on this subject. And, certainly, it is way too early to condemn him.

So, Mr. President, I want to draw a distinct line between those charges that were made earlier by my cosponsor and myself. As I say, I was a cosponsor of the resolution that just was agreed to.

On the subject of CFC's, the United States is a leader. No question about it.

In legislation that we passed, with the power that we have given the head of the EPA, the Administrator of the Environmental Protection Agency, to go further—and indeed he will go further—on the subject of global climate change, let us see. The jury is still out. And we certainly hope that in the New York City negotiations that I talk about, the United States will take a leading position.

I thank the Chair.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. WOFFORD). The Senator from Minnesota.

AMENDMENT NO. 1574

(Purpose: To strike the section exempting Federal Energy Regulatory Commission meetings from the Government in the Sunshine Act)

Mr. WELLSTONE. Mr. President, on behalf of myself and Senator GRAHAM of Florida, 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 Minnesota [Mr. WELLSTONE], for himself and Mr. GRAHAM, proposes an amendment numbered 1574.

Mr. WELLSTONE. 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 303, strike line 15 and all that follows through line 21.

Mr. WELLSTONE. Mr. President, I understand this amendment has been cleared with the managers. Let me be very brief.

The Government in the Sunshine Act is an important measure that assures that there will be accountability in Government agencies. It requires that decisions be made in the open and in public. The section of S. 2166 which my amendment strikes would have allowed the Federal Energy Regulatory Commission to hold meetings without public scrutiny.

Mr. President, I also ask unanimous consent to have printed in the RECORD a letter signed by Senators GLENN, ROTH, and KOHL.

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

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, October 22, 1991.

Sen. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, Washington, DC.

DEAR BENNETT: We are writing with regard to the provision contained in S. 1220, "The National Energy Strategy Act of 1991," which grants the Federal Energy Regulatory Commission [FERC] an exemption from the government in the Sunshine Act. We have carefully reviewed the legislation, the report, as well as the record of your hearings and numerous markup sessions on S. 1220. For the reasons stated below, it is our hope that you will agree to remove Section 11112, entitled "Commission Policy Making."

As you know, when the Committee on Governmental Affairs authored the Government in the Sunshine Act, its intent was to provide the public and the Congress with the ability to hold federal entities accountable for their decisions and actions. The law was viewed as necessary to ensure that essential democratic processes were operating during the development of national policy and the implementation of our laws. The Committee also recognized that there may be times when a range of overriding legal and policy concerns would require closing a meeting to the public, and as a result nine exemptions were written into the law. Since 1974, the law has ensured that the public's business is conducted in public. It has improved public accountability and oversight by the Congress. It has closed the "back door" to federal entities who have served as a forum of undisclosed dealmaking. In recent years, Congress has been accused of devoting insufficient attention to its oversight responsibilities at great cost to the American public. The Government in the Sunshine Act is the principle means by which Congress, and the public, can conduct meaningful oversight of the federal government.

In reviewing your Committee's legislative history on Section 11112 of S. 1220 (and its predecessor S. 341), we found that the strongly worded report language in support of a FERC Sunshine Act exemption, contrasts sharply with the lack of any record in the hearing reports and transcripts of the markup sessions with regard to the need or rationale for such a provision. Save for a single

comment by a Department of Energy official proposing to merge the FERC with the DOE, there is quite literally not a word devoted to the rationale or need for a FERC Sunshine Act exemption.

Furthermore, our own research indicates that had the proposed FERC exemption been the subject of an open discussion and debate, FERC's own history, coupled with the impact of the proposed exemption on congressional oversight, would have greatly diminished the appeal of the provisions. First, despite public comments by the FERC Administrator that the law restricts his ability to gather three commissioners together for a meeting, we have reviewed the FERC's Sunshine Act reports filed with our Committee over the past four years. These reports reflect neither a difficulty of holding meetings, an above average number of closed meetings, or a need for additional exemptions. Second, we are greatly troubled by the nature of the provision because it would eliminate the requirement of a written record during the meetings of the FERC commissioners outside of the Sunshine Act requirements. Such an exemption conflicts with other statutory responsibilities, such as the Federal Records Act, and undercuts not only needed public accountability, but also the fundamental vehicle for congressional oversight. Third, we believe that a FERC Sunshine Act Exemption for all general policy discussions is incompatible with the nation's need for a sound and effective energy strategy and policy. Surrounding the development of such policy in secrecy detracts from this goal, and in the end will reduce public support for needed reforms. Lastly, we have examined the available history of the FERC's compliance with federal records and public accountability requirements of the Federal Records Act, the National Environmental Preservation Act, and rules governing ex parte communications. This is an agency history that calls for greater openness, not less.

We respectfully request that you propose an amendment to strike the section which would provide the FERC with a Sunshine Act exemption, and oppose any other language having the purpose of providing an exemption.

You may contact Robert Harris, Deputy Staff Director, Committee on Governmental Affairs, 224-4751; or Steven Katz, Chief Counsel, Subcommittee on Government Information and Regulation, 224-9000, if you or your staff have questions.

Sincerely,

JOHN GLENN,
Chairman, Committee on Governmental Affairs.

HERBERT KOHL,
Chairman, Subcommittee on Government Information and Regulation.

WILLIAM ROTH,
Ranking Member, Committee on Governmental Affairs.

Mr. WELLSTONE. I will just read a couple of relevant sentences from this letter:

As you know, when the Committee on Government Affairs authored the Government in the Sunshine Act, its intent was to provide the public and the Congress with the ability to hold federal entities accountable for their decisions and actions.

They go on to simply say:

The Government in the Sunshine Act is the principal means by which Congress and the public can conduct meaningful oversight of the federal government.

Mr. President, open, accountable government I think is what we all believe in. I think this amendment is an important amendment and, as I said before, I understand it has been cleared by the managers.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, at the request of the head of the FERC and in the interests of efficiency of running that Commission better, we worked on an amendment which would allow FERC commissioners to talk to one another about policy matters, and there was no attempt to avoid public disclosure. But sometimes when you have a huge number of things to talk about, commissioners, like Senators, want to talk without having to convene a meeting with a stenographer and a record. I mean, they want to be able to talk as I have just been talking to the Senator from Minnesota and others about what we are going to do.

In the event, we made several attempts to put together such an amendment and, really, we did not succeed, either by our lights or by his. It remains a part of the bill. But we were not successful in working it out in such a way that we could satisfy people that it was a good compromise between sunshine on the one hand and efficiency without detracting from the public's right to know on the other hand.

So, to make a long story about, we think Senator WELLSTONE has a good amendment and we will accept it.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, the minority fully subscribes to the process. I would say that from my perspective the process that exists now is grossly inefficient and does not lead to timely and well-reasoned decisions. It is odd that two members of the Commission cannot breakfast with each other for fear of being in violation. That was what we tried to address.

I agree with Senator JOHNSTON, what the chairman sent over to us did not address it. What we tried to do did not address it. So for the time being I think what the Senator from Minnesota is doing is restoring us to where we are, which is inefficient, but where we were going is inefficient as well.

I still hope someday we will work on this and try to make a process that satisfies the public interest. But the public also has an interest in speedy, rational decisions by that agency and they are not always getting that now with the rules that exist.

The minority accepts this amendment as well.

Mr. GRAHAM. Mr. President, because of my concern about the right of the American people to have their Government operate in the sunshine, I am an original cosponsor of Senator WELLSTONE's amendment to strike section 11112 entitled "Commission Policy Making," of the National Energy Security Act (S. 1220) which would grant the Federal Energy Regulatory Commission [FERC] an exemption from the Sunshine Act.

As Governor of Florida, I had extensive experience in operating a State "in the sunshine." The open meetings held in Florida assured access and the ability to participate to all Floridians. I believe that this openness benefits all parties and certainly helps to make Government by the people possible.

FERC argues that the Commission could have acted more efficiently if general policy discussions had been exempted from the Sunshine Act. However, a review of the Sunshine Act reports filed by FERC with the Governmental Affairs Committee over the last 4 years does not show that FERC policymaking was inhibited by the open meetings called for in the act. Further, FERC does not explain why, in contrast to other agencies subject to the Sunshine Act, it has a special need to promulgate policy in secret.

FERC has a tremendous responsibility to the American people to develop sound and efficient energy strategy and policy. And, the American people deserve to have access to all FERC meetings to comment on and participate in these decisions of national importance. Clearly, FERC is an agency that should be more open, not less.

Mr. WELLSTONE. Mr. President, let me thank both Senators and once again say I appreciate the concern that they expressed on the efficiency ethic. But it has been said more than once that democracy does not always operate on an efficiency ethic. I do believe this Sunshine Act is important. It is an important part of how we keep agencies accountable. I think people in the country want that to be the case and so I am very pleased they accepted the amendment.

The PRESIDING OFFICER. Is there further debate? If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1574) was agreed to.

Mr. JOHNSTON. Mr. President, we have a huge number of possible amendments of which we hope most will go away. But Senators who are serious about their amendments should come to the floor now because we hope to finish this bill up by tonight. We have reason to be very optimistic that some of the major areas of the bill will come together. But if Senators still wish to push their amendments, now is the time to come to the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, while we are waiting for somebody to offer an

amendment, I will just take the opportunity to tell an interesting little story. When I first came to the Senate, I wanted to be on the Finance Committee and the Energy Committee. Although I did get on the Energy Committee, I did not get on Finance. Instead I got a committee called Aeronautical and Space Sciences. And it was a pretty spacy committee, to tell you the truth. We had the good judgment to abolish it back in the 1970's.

I must tell you, in the category of "now it can be told," I was bored stiff on that committee. So I went to the chairman and I said: Mr. Chairman, I have read a very interesting story about a couple of scientists out at the University of California at Irvine named Roland and Molina. And it was the ozone depletion theory. This was in 1975.

I said I would like to get those people in here and hold a few hearings on this. And he said, well, it will have to be an ad hoc subcommittee and you need to get somebody on the Republican side to help you with it. So I enlisted the Senator from New Mexico, my friend Senator DOMENICI.

It turned out that we held nine hearings. I think we had a television camera there one time—one camera, 1 day out of the nine hearings. And the testimony was overwhelming. I remember especially Dr. McElroy, who was an atmospheric scientist at Harvard. We even had Dr. Ramannofen come in and testify about the greenhouse effect, which was not totally unrelated, but it was not what we were dealing with. We were dealing with chlorofluorocarbons and the potential for their destruction of the ozone layer.

That has been over 16 years ago. Later on, Senator PACKWOOD and I offered an amendment on the floor of the U.S. Senate to ban the manufacturing of chlorofluorocarbons on the simple proposition that this theory was probably true and, further, on the proposition that even if you banned chlorofluorocarbons right then you still had 12 years' worth of them wafting into the atmosphere. Because if you spray your hair in the morning in the privacy of your bathroom, it takes 12 years for those chlorofluorocarbons to get up to the point—sometimes longer—where they destroy ozone molecules.

The argument that Senator PACKWOOD and I made on the floor that day was that because, if the theory is true, there was going to be another 12 years of ozone depletion from the moment we spoke, to err on the side of caution was exceedingly prudent. When we got around to voting, I came through that hallway on the far end of the Senate and there were two lobbyists from the chemical industry for every Senator who came through the door. As I recall, we got 33 votes.

Mr. President, the worst thing any politician can ever do is get up and say, "I told you so." I just find the incidents I related sort of interesting, because the point I want to make is, whether it is the deficit, whether it is nuclear weaponry, whether it is the greenhouse effect or ozone depletion—as a great political theorist, Walter Lipman, once said, "Don't be right before it is popular if you want to keep getting reelected."

So we just keep doing things around here on the basis of wherever the most television cameras are situated, whatever happens to be sexy in the morning paper. And now we have this impending catastrophe on our hands because we did not have the courage to deal with it in 1975. And I only tell that for guidance for those who choose to listen as to what the future ought to be and how we ought to be dealing with it.

Campaign finance? The political system is being seriously eroded and we cannot come to grips with it.

I could stand here and list a dozen, two dozen other items that are equally as threatening, not only to the atmosphere, but to the quality of life in this country. But as Walt Whitman said, it is not popular yet.

I yield the floor.

OPEN DOOR

Mr. COCHRAN. Mr. President, I would like to take a moment to bring to the attention of the Senate a program that addresses the issue of affordable housing in the metropolitan areas of New Orleans, Little Rock, and Jackson, MS. This unique program was developed by one of the Nation's largest investor-owned public utility holding companies, Entergy Corp. Working with established grassroots groups in each of these three cities, the company hopes affordable housing will become a reality for low- and moderate-income citizens.

Called Open Door, this regional program helps prospective home buyers qualify for and prepare for homeownership.

Owning a home is central to the American dream. This program may be one of the ways to help make that dream a reality. If it works as the company anticipates it will, the Open Door program will be a challenge for others in the business community to undertake similar initiatives.

I ask unanimous consent that a brochure describing the Entergy program be printed in the RECORD.

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

OPEN DOOR

TURNING VISIONS INTO REALITY

These are challenging times for the people of Arkansas, Louisiana and Mississippi as we strive to maintain and build upon the quality of life we value so highly.

Entergy Corporation believes that successfully meeting the challenges we face will require an unprecedented spirit of cooperation, innovation and partnership between the public and private sectors in all three states. That's why Entergy has designed *Open Door*, a regional development program that addresses the issue of affordable housing in the region's three major metropolitan areas of New Orleans, Jackson and Little Rock.

Funded by Entergy stockholders, *Open Door* is a multi-faceted initiative designed to support and strengthen ongoing efforts to improve the accessibility and affordability of housing for low- and moderate-income residents. *Open Door* seeks to apply resources where they are most needed and with those groups in a position to make the best use of them.

Open Door, like our successful *New Opportunities* education programs, will be implemented through community partnerships. Partners are being identified in three primary areas with a number of programs, including:

HOME OWNERSHIP

A *Renovation Revolving Fund* will provide funds to low- and moderate-income home buyers for upgrading existing structures. Prospective home buyers holding a financing agreement from a lending institution would be eligible for renovation funds that would be included in the loan package and paid back into the *Renovation Revolving Fund* at settlement of the loan.

A *Home Ownership Counseling Program* will help prepare first-time home buyers for the responsibilities of ownership of single unit or multi-family homes.

Community Development Corporations that encourage a greater role for communities in assuming responsibility for their own housing and development-related activities will also be eligible for support from Entergy's *Open Door* program through our partners, such as the Local Initiatives Support Corporation (LISC). The objective is to create and support grassroots community organizations capable of leading a community to greater home ownership and/or housing development self-sufficiency.

Other home ownership alternatives such as housing cooperatives will be systematically investigated as a part of a continuing effort to provide communities more control over their own, and their neighborhood's housing.

HOME OWNERSHIP AND RENTAL HOUSING

The *Work Force Skills Support Program*, a logical extension of our existing education programs, will work to maintain and increase the employability of persons assisted by any housing program and, therefore, their capacity to afford suitable housing as either home owners or renters.

A *Volunteerism Program*, extending our current employee efforts, will work toward increased community involvement in the housing arena through participation in major improvement projects such as cleanup and weatherization in the targeted cities.

RENTAL HOUSING

Entergy is currently pursuing necessary regulatory approvals to support the improvement and construction of rental units within our service area.

FORGING A PARTNERSHIP

Our region is fortunate to have a number of groups and individuals on the local levels addressing the issue of affordable housing, an issue that impacts the health of our economy and the quality of life for all of us. Through *Open Door*, Entergy Corporation is forging a partnership that combines its resources with the expertise of these grass-

roots organizations so that together we can effectively meet the challenge of making housing available and affordable to greater numbers of people.

Entergy hopes its participation in this area will encourage others in the private sector to join us as partners with our communities as we seek to further open the door of progress in our region.

For more information on the *Open Door* program, contact Entergy's Regional Development Department, P.O. Box 61000, New Orleans, Louisiana 70161, (504) 569-4723.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that a congressional fellow assigned to my office, Dr. Kenneth Taylor, be allowed permission during the pendency of this bill to remain on the Senate floor.

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

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. JOHNSTON. Mr. President, shortly, it is my intention to offer an amendment in the nature of a substitute with respect to the nuclear reactor licensing provisions. I expect that there will be a second-degree amendment by Senator GRAHAM to that first-degree amendment, and we should put that in very shortly.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. JOHNSTON. Mr. President, I will shortly send to the desk an amendment on behalf of myself, Senator WALLOP, Senator SIMPSON, Senator BREAUX, Senator FORD, Senator WIRTH, Senator HEFLIN, Senator BUMPERS, Senator PRYOR, Senator SHELBY—and I believe there will be others as well—which is in the nature of a substitute for a large portion of the bill relating to nuclear licensing.

I might tell my colleagues that I expect that there would then be a second-degree amendment offered by Senator GRAHAM, to that, and that will be the business.

AMENDMENT NO. 1575

Mr. JOHNSTON. Mr. President, at this time I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for himself, Mr. WALLOP, Mr. SIMPSON, Mr. BREAUX, Mr. FORD, Mr. WIRTH, Mr. HEFLIN, Mr. BUMPERS, Mr. PRYOR, and Mr. SHELBY, proposes an amendment numbered 1575.

Mr. JOHNSTON. 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 189, strike line 11 through page 193, line 6 and insert the following:

TITLE IX—NUCLEAR REACTOR LICENSING

SEC. 9101. SHORT TITLE.

This title may be cited as the "Nuclear Reactor Licensing Act of 1991.".

SEC. 9102. COMBINED LICENSES.

Section 185 of the Atomic Energy Act of 1954 (42 U.S.C. 2235) is amended by—

(1) adding "and Operating Licenses" after "Permits" in the catchline;

(2) adding a subsection designator (a) before "All"; and

(3) adding the following new subsection:

(b) After holding a public hearing under section 189(a)(1)(A) of this Act, the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. Any finding made under this subsection shall not require a hearing except as provided in section 189(a)(1)(B).

SEC. 9103. POSTCONSTRUCTION HEARINGS ON COMBINED LICENSES.

Section 189(a)(1) of the Atomic Energy Act is amended by:

(1) adding a subparagraph designator "(A)" before "In" and

(2) adding the following new subparagraph:

(B)(i) Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 185(b), the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

(ii) A request for hearing under this subparagraph shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(iii) After receiving a request for a hearing under this subparagraph, the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(iv) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under this subparagraph, and shall state its reasons therefore.

(v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within one hundred and eighty days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A).

SEC. 9104. RULEMAKING.

The Nuclear Regulatory Commission shall propose regulations implementing this title within one year of the date of enactment of this Act.

SEC. 9105. AMENDMENT OF A COMBINED LICENSE PENDING A HEARING.

Section 189(a)(2) of the Atomic Energy Act of 1954 is amended by inserting "or any amendment to a combined construction and operating license" after "any amendment to an operating license" each time it occurs.

SEC. 9106. JUDICIAL REVIEW.

Section 189(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2239(b)) is amended by inserting "or any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license" before "shall be subject to judicial review".

SEC. 9107. CONFORMING AMENDMENT.

The table of contents of the Atomic Energy Act of 1954 is amended by amending the item relating to section 185 to read as follows:

"Sec. 185. Construction Permits and Operating Licenses."

SEC. 9108. EFFECT ON PENDING PROCEEDINGS.

The provisions of this title apply to all proceedings involving a combined license for which an application was filed after May 8, 1991.

AMENDMENT TO S. 2166, TITLE IX TECHNICAL AND CONFORMING AMENDMENT

On page 5, following the item in the table of contents relating to section 9105, insert the following and renumber subsequent sections accordingly:

"Sec. 9106. Judicial review."

Mr. JOHNSTON. Mr. President, prior to 1989, we had a two-step process for licensing of nuclear plants. They provided for a construction license, and after that, an operating license.

What experience dictated from that was that it was an unpredictable process, that at times there were considerations and public hearings and, in effect, complicated trials relating to the safety standards of nuclear plants that were taking place after the fact, after either the whole plant or part of the plant had been constructed and, consequently, it resulted in billions and billions of dollars of losses because changes that were ordered sometimes were ordered after a nuclear plant had already been constructed in whole or in part. So they had to rip out what they had done and start all over again, or, in at least a few cases, a completed plant had to await the hearing process while, in effect, the trial droned on.

Mr. President, these public hearings, as we refer to them in the Atomic Energy Act and also the Nuclear Regulatory Commission regulations in part 52, really amount to an extensive trial, a very technical trial, which is preceded by discovery which goes on for periods of months. That is followed by a period of public hearings which is like the ordinary trial. That is followed by briefs and rebuttal briefs and surrebuttal briefs, and the public hearing process can take years to finish.

Mr. President, there has been no nuclear plant ordered since 1978, and unless that licensing system is appropriately straightened out, most experts concede that there will never be another nuclear plant ordered again. In order for Wall Street or for investors to invest in a plant, they need to know with some degree of certainty that the licensing process will permit a safely constructed plant to proceed into operation on time. Otherwise, they cannot take the risk that their $3 billion, or whatever the figure is for the construction of that plant, might lay fallow while the courts drone on and on with years of litigation.

Mr. President, in order to correct that licensing process, the Nuclear Regulatory Commission came forth with new regulations, which are published in 10 CFR 52, and which they call part 52. The Nuclear Regulatory Commission had for years sought congressional legislation, feeling that it was most appropriate for the Congress to act. But after years of invitations and after years of silence from the Congress, the Nuclear Regulatory Commission undertook on its own to amend these rules, as they have in part 52.

What they provide in part 52, the theme of part 52, is, first of all, total and complete protection for the public; and, second, moving as much of the process to the preconstruction period as is possible. And, consequently, they divided the hearing process into three different and separate phases.

One is a siting process—where should a nuclear plant be located? We found, for example, in the Shoreham case located in Long Island, NY, that they never got around adequately to address the siting problem and the cognate problem of emergency evacuation until after the plant was built—an absolutely incredible situation. However you feel about the relative safety of the Shoreham plant, no one can fail to grasp the incredible stupidity of waiting until a plant is built at a cost of billions of dollars and then trying to assess whether it was appropriate to put it in the place where it was located and whether it was possible under any situation to adequately and safely evacuate people in the event of a nuclear accident.

As a matter of fact, what happened in Shoreham is, while the plant was issued a license to operate after years of delay, the State of New York felt unsatisfied with that and the plant was never able to go into operation. So what part 52 does is to start with the siting question and allow a utility that wants to site a plant to convert the whole process, where they put their plans, where you have public hearings—again, public hearings are a trial. You allow the intervenors, as we call them, to take depositions, to bring experts forward, to have the full-scale trial with all the delays that it may entail.

A second and separate part of the application, as provided under part 52, is what we call the generic operating license. Our rules were also very badly designed initially in nuclear matters because, in effect, each plant was designed anew, custom designed; in effect, instead of having a Ford automobile, then every owner of an automobile would have to design his own car from ground zero. Every owner of a nuclear plant would have to put up a brandnew design and get that approved anew, even in those cases where the design was similar to one that had been used before. All that went on in the previous design and previous hearing of a similar plant did not resolve those questions for the next plant. So there was, in effect, no approval of a standard design.

We now have experience, Mr. President, on various designs of nuclear plants, and what part 52 provides for is for this generic design approval.

The hearing part of the generic design is scheduled to take 18 months and the staff review is scheduled to take 30 months, for a total of 48 months to get a generic design approval as the second part of part 52, as it is called, of the Nuclear Regulatory Commission rules.

So that before a company ever really decides or is really given a permit to begin construction of a plant, it will have been through 4 years of hearings with respect to its site, where all of these questions about emergency evacuation, what-have-you, will have been fully aired; not only fully aired, but fully litigated, and chances for briefs and counterbriefs, and the same thing will have been true with respect to the design of the plant.

Then, finally, Mr. President, the Nuclear Regulatory Commission has come up with what they call a combined license, which is a combined construction and operating license. And they forsee that the combined license will have a staff review of 16 months and a hearing schedule of 22 months. So that all of this has taken place after the site has been approved and after the design has been certified, and again, with all of these months and years of work before you ever start construction. So early site permit, design certification, staff review, and 22 months of hearings before you ever begin construction.

Now, once you begin construction, Mr. President, it is estimated by the NRC—these are all in NRC figures—they foresee 72 months before the combined license is issued.

Mr. President, the NRC proposed their part 52 rules, and they were litigated before the U.S. Court of Appeals for the D.C. Circuit. The Court of Appeals for the D.C. Circuit affirmed these rules in part and disallowed the rules in part.

In disallowing rules, the question before the D.C. Circuit was not the desirability or the safety standards or whether it adequately protected the public interests, but the question presented to the D.C. Court of Appeals was a narrow one; that is, whether the adoption of part 52, the rules of the Nuclear Regulatory Commission, were within the purview of the Atomic Energy Act of 1954 or whether, contrary, they exceeded the authority in that act. By a 3-to-0 vote, the D.C. Court of Appeals disallowed these rules in part and, in effect, the D.C. Court of Appeals allows for an additional hearing at the end of construction out here upon the making of a prima facie case.

In effect, the decision of the D.C. Circuit was to allow an additional hearing. Keep in mind the duration of those hearings—on site permit, 22 months; on design certification, 18 months; on preoperational hearing, 22 months. We are talking of a process that typically takes the better part of 2 years.

Now, if that kind of possibility were allowed here at the end, it is perfectly obvious that the record, the unbroken record of no nuclear plants since 1978 would be continued. It is perfectly clear that there is no way, with that kind of uncertainty, that you could ever build a nuclear plant. Because, of course, those who oppose nuclear energy, either for good reason or, others would say, not good reason, are very inventive and the making of a so-called prima facie case has not been an insurmountable question with them.

So that is the state of the law right now, Mr. President. The Court of Ap-

peals for the D.C. Circuit has granted a rehearing en banc, which means that the three judges, who by a 3-to-0 decision, declared the process ultra vires, or beyond the authority of the Atomic Energy Act of 1954, will be reheard by the full court, which is 12 or 15 judges. And there are various estimates about chances for success, which mean about as much as somebody's estimates of who is going to win the next basketball game or the Superbowl.

After that decision is made, undoubtedly the case would have to go to the U.S. Supreme Court and we all know how long that process takes. So we are looking at some years more of litigation.

Now what we have done in our legislation, Mr. President, is essentially approve part 52, approve what the Nuclear Regulatory Commission has done.

And the Nuclear Regulatory Commission, in testimony before the Congress, has approved what our bill has done.

However, since introduction of our bill and while the bill has been here on the floor, Senators have had some concern about our bill, and they want to ensure that certain standards are met by our bill. One has to do with judicial review, whether or not there is a right to judicial review from an order either granting permission to operate or refusing permission to operate. And there are legal scholars who said that that right of judicial review was neither present in part 52, nor present in our legislation which approved part 52.

So the first thing we do in this amendment is to make it clear that a decision by the Nuclear Regulatory Commission to either allow or disallow a plant, licensed under the provisions of this law, is in fact subject to judicial review.

Second, we make it clear that the NRC must find that a nuclear power plant meets the necessary safety requirements before the plant can begin operating. In our legislation, the words used were the Commission must "satisfy itself." We have changed that wording to the Nuclear Regulatory Commission must "find."

Third, with respect to interim operation, if a hearing is granted, at the end of that process. If a hearing is granted, at the end of this process, and the Nuclear Regulatory Commission in its discretion allows the plant to operate, they must first determine that the plant may operate safely during that time.

The kind of situation we envision is where there is no question about the safe operation of the plant, but there might be, for example, a long-term implication for safety. For example, in the Yankee Rowe plant, in which case a decision was made recently to close Yankee Rowe after some 30 years of operation. They closed the plant down not because during that first 30 years it was unsafe, but because they could not satisfy themselves that after 30 years of neutron bombardment of this huge pressure vessel that the steel in that pressure vessel, over that period of time, had not become brittle.

Interim operation might allow you, when you have that kind of situation where somebody says this pressure vessel will not be good after 30 years of operation, you might allow it, during a hearing process on the question of the integrity of the vessel for beyond 30 years, to begin operation. But in order to do that, the Nuclear Regulatory Commission would have to determine that the plant would operate safely in the interim.

Finally, our amendment provides that when the NRC grants a hearing, they must state the reasons for the kind of hearing which they have, whether it is what we call an adjudicatory hearing, which is like a formal trial where the lawyers are on both sides, and chains of evidence, examination, and cross-examination and all that; or whether it can be done on a more informal basis.

The scientists, and particularly the members of the Nuclear Regulatory Commission, say that they very much should continue to have the right to exercise their discretion. They cite an example. For example, when you have an allegation of a faulty weld in a nuclear plant, in a trial-type situation then the proponents of the license would come in and prove a chain of proof with respect to x rays, for example, on the weld. They would bring in the welder. They would bring in the people who took the x rays. They would bring in the experts who would read the x rays. And everybody would say: This is a good weld.

Then, in this adjudicatory hearing, some opponent would come in and say: Yes, but I saw this guy faultily weld. He was drunk that day. Or, they cannot read these welds.

That kind of situation, a question over a weld, for example, lends itself better to an informal hearing. What would scientists do in that situation? They would look at it and they would say: Look, we cannot resolve this. Let us go and take a new x ray. They would sent the experts out; take a new x ray. If they were not satisfied with the first x ray, they would take the second; and if they were not satisfied then, they would say, well, this plant should not be able to operate, rather than going through this trial-type procedure where you really do not get to the truth of the matter, as well.

What the Nuclear Regulatory Commission says is: We ought to continue to have that discretion. They have that discretion at the present time. So we believe, and our legislation says, they ought to have that discretion.

However, those who are asking for an adjudicatory hearing—you know, there is a big trial bar out there that likes to have trials. My dad, who was a lawyer—and I used to practice with him—told me, "Son, the safety of the Republic lies in a well-paid bar." He would say that occasionally after we made a good fee, which was not that often. But he used to say that. So I understand the desire of lawyers to have lawsuits and trials and briefs and cross-examination and depositions, and all of those wonderful things that we lawyers used to do, at least when I was a practicing lawyer, in order to make our fees.

And if the lawyers are going to be denied the right to those fees and that trial, then we say the Nuclear Regulatory Commission ought to spread on the record the reasons that they adopt a particular kind of procedure. It is just a little bit of protection so that people will know they are listened to when they ask for the adjudicatory hearing and so it will make the Nuclear Regulatory Commission focus on that question.

There will be times when an adjudicatory proceeding is appropriate. Keep in mind that an informal proceeding can allow as much formality as necessary. It could allow, for example, for cross-examination, without being a full blown adjudicatory proceeding. It is just not bound by all of the strict rules of evidence and the strict and sometimes limiting trial procedures.

So, in effect, our amendment was an attempt to meet the concerns, frankly, of the Senator from Florida [Mr. GRAHAM]. Unfortunately, we were, apparently, not able to meet all those concerns. But our amendment was an attempt to do so.

I will let him speak for himself. But I think he will see it as in attempt to take what we regard as a giant step—which he would regard as maybe an inadequate step—but nevertheless, an attempt to meet him on those concerns, because these were the concerns that were communicated to us. I will let him speak about his substitute.

Suffice it to say that the Nuclear Regulatory Commission endorses our approach, our initial approach as well as our alternative approach as contained in this amendment.

Mr. President, I ask unanimous consent that a letter dated February 6, 1992, from Ivan Selin, who is Chairman of the Nuclear Regulatory Commission, addressed to me endorsing our substitute amendment be printed in the RECORD. I will hold up on the other letter which speaks about Senator GRAHAM'S amendment until it is offered.

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

NUCLEAR REGULATORY COMMISSION,
Washington, DC, February 6, 1992.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN. In response to your request, we have examined the proposed

changes contained in the Johnston/Wallop substitute amendment to Title IX of S. 2166, the "National Energy Security Act of 1992." In our opinion, the changes in the substitute improve the language of S. 2166 because they reduce any uncertainties about the intent of the bill. Therefore, we support the Johnston/Wallop substitute.

Sincerely,

IVAN SELIN.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Senator from New Mexico [Mr. BINGAMAN] and the Senator from Idaho [Mr. SYMMS] be added as cosponsors of the amendment.

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

Mr. JOHNSTON. Mr. President, I ask unanimous consent that Senators CRAIG and DOMENICI also be added as cosponsors.

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

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, shortly, I will be sending to the desk a perfecting, second-degree amendment to the amendment offered by the Senator from Louisiana. I will use this time to set a context for the very detailed debate that will then follow relative to the differences between the amendment which has been offered by the Senator from Louisiana, the perfecting amendment, and the underlying bill, which we have before us.

But, before that, what is it we are trying to accomplish? I come from a State which has had a lengthy and positive experience with nuclear power. Approximately 15 percent of the electrical energy generated in my State is generated by nuclear. It has in the main been a well-received component of our electrical generating system. In my former capacity as chief executive of the State, I participated in some State procedures which were part of the process of initiating nuclear power plants in my State. So my position is not one of antagonism to nuclear energy. Quite the contrary. It is one of seeing nuclear power as an appropriate and constructive part of our present and future energy for America.

Within that personal context, what do I believe our goals should be? I believe our goals should be to create a proper environment for a decision by those who will have to decide whether to commit the very substantial investment necessary for a nuclear power plant; to create an environment in which that decision will be made with the role of Government being as neutral as possible; that is, that Government would not by its action have titled the decision toward one source of energy as opposed to the other for the generation of nuclear power.

In order to achieve that goal of a level playing field, we must first consider the factors that have disequalized the playing field. This legislation addresses some of those factors. The Nuclear Regulatory Commission has addressed others. One already addressed by the NRC which the Senator from Louisiana has spoken to is the necessity for the standardization of nuclear plant designs, which is a critical step in terms of creating a level of confidence by utility firms and others who will be affected. I applaud the NRC for the steps that it has taken in terms of achieving a higher level of standardization and design.

That is also important because it affects the regulatory policy. The fact is that with the adoption of the standardization and licensing regulations by the Nuclear Regulatory Commission in 1989, which I will refer to as part 52, as has the Senator from Louisiana, the NRC moved an enormous distance toward dealing with the concerns that the industry had expressed in the previous unpredictability of the nuclear licensing process. Many of the concerns which the industry had raised in the period prior to 1989 were resolved in those regulations.

From the adoption of those regulations until the spring of last year, the Nuclear Regulatory Commission had consistently said that the regulations that it had adopted represented an appropriate resolution of this issue. The NRC had opposed any further congressional action relative to nuclear licensing until the spring of 1991.

A third important issue is the maintenance of public confidence in the regulatory system. This is an enormously complicated area. In this debate we are going to get a little bit of the complexity essentially on the legal aspects of this industry. The technical complexities also are difficult for the general public to fully appreciate and judge. And, therefore, it is peculiarly important for those agencies that have been assigned the responsibility to make those judgments to make judgments that the general public will depend upon for its own safety and protection, and that those agencies have the highest public credibility and confidence.

I am concerned that, through this process that has led us to this debate today, that there has been a compromise of that credibility of the Nuclear Regulatory Commission, and that that compromising has affected the environment in which we are not going to be considering where should we proceed in terms of further modifications in nuclear licensing.

At this point, Mr. President, in order to accommodate the schedule of our colleague from Nevada, I would like to yield such time as the Senator from Nevada will require in order to discuss the issue of the maintenance of public confidence in the Nuclear Regulatory Commission and how that confidence will affect the nuclear licensing process. I yield such time as will be required to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I greatly appreciate the Senator being courteous, as he always is, recognizing I have a problem with a 2 o'clock event.

I also want to say that I serve as a member of the subcommittee of the distinguished Senator from Florida [Mr. GRAHAM] and I publicly, as I have privately, commend and applaud the Senator for the activism he has shown in that subcommittee. The material that is discussed, the issues discussed in that subcommittee are not things that make headlines in newspapers. They are very technical, they are very scientific in many respects, they are very procedural, and a lot of times not real substantive, but there is nothing we do in the Congress that is more important than having proper control and authority over those things nuclear. That subcommittee has been outstanding, as lead by Senator GRAHAM, so I personally appreciate the work he has done.

I rise, Mr. President, today in support of the second-degree amendment that will soon be offered by the chairman of the Subcommittee on Nuclear Licensing, the senior Senator from Florida.

This amendment to title IX of the energy bill provides a workable compromise on the problems relating to nuclear licensing. The legislative history on nuclear licensing is a long one, a real long one. This amendment proposed by Chairman GRAHAM contains nearly identical language to proposals presented by the Nuclear Regulatory Commission to Congress in 1985 and 1987.

Let me repeat that, Mr. President. This amendment that will be proposed by Senator GRAHAM contains nearly identical language to proposals made by the NRC to Congress in 1985 and 1987.

Many Members of this body may understand that the NRC supports the nuclear licensing provisions of 2166. I argue that agency support was the result of an 8-month campaign of intimidation and pressure exerted by the Department of Energy. I do not say that out of some speculation. I do not say that out of any reason other than facts that have been uncovered during the work of the subcommittee. One hearing was held, and this was gone into at great length.

Let me present to the Senate what I think are not circumstantial facts but these are solid, hard facts to show that the Department of Energy began a campaign of intimidation and coercion to get the NRC to fall into line. And I am sorry to report to this Senate that the NRC did fall into line.

It is interesting that in previous testimony before the House Subcommittee on Energy and Environment, the Chairman of the NRC testified that the

NRC did not believe this type of legislation was really needed. The opinion of the Chairman of the independent Nuclear Regulatory Commission—and I quote, underline and put in parenthesis independent—drew the ire of the officials within the DOE as indicated, Mr. President, by a memorandum dated September 24 of last year from the assistant Secretary of Energy William Young.

He outlined a series of instances where Chairman Selin, the Chairman of the Nuclear Regulatory Commission, is undermining important provisions of S. 1220. This memo says some interesting things. I will ask unanimous consent that this memorandum be printed in the RECORD.

Mr. JOHNSTON. Mr. President, will the Senator yield at that point?

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

Mr. JOHNSTON. Is the Senator aware that the Chairman of the Nuclear Regulatory Commission disapproves of the amendment by the distinguished Senator from Florida and approves of the amendment, the proposed first-degree amendment?

Mr. REID. I have no doubt whatsoever that the Chairman of the Nuclear Regulatory Commission would oppose an amendment offered by the senior Senator from Florida. I have no doubt that is the case, and that is the case I am making.

The case I am making, I say to my friend from Louisiana, is that the Nuclear Regulatory Commission does whatever the DOE wants them to do, and that is the whole point of my discussion. Whatever the DOE wants, the Nuclear Regulatory Commission falls into line stumbling over itself to do what the DOE wants. And that is indicated, as I have mentioned, in a memorandum to Admiral Watkins from William Young, Assistant Secretary of Energy, where he says, among other things:

It is clear that while Chairman Selin gives lipservices to support of S. 1220, he is opportunistically—if not systematically—undermining the key provisions of S. 1220 in conversations with congressional Democrats who are not nuclear supporters. It seems likely that Chairman Selin's agenda is to end up showing that part 52 is really all that anyone needs.

Now, he discusses some of the things that Selin has done, and then he sets forth, in what he titles the last couple of pages of this memorandum a discussion, that we have a number of alternatives, and I am paraphrasing this, and here is what I recommend. I quote:

I believe that some action should be taken to obtain an unequivocal written or public statement from Chairman Selin supporting the specific provisions of S. 1220. * * * I have outlined below several options for doing that and have summarized what I see as their pros and cons.

Mr. President, let us put this in proper perspective. We have here an Assistant Secretary from the Department of Energy telling the independent Nuclear Regulatory Commission what they are supposed to do, and he is directing this to the secretary, to Admiral Watkins, saying here is what we are going to do, here is what I recommend that the Department of Energy do so that Selin will fall in line.

Option 1: Seek Chairman Selin's signature on a joint statement with Admiral Watkins in support of the provisions of S. 1220. Seek Governor Sununu's action on unresolved issues.

Then he lists for Admiral Watkins the pros and cons. He says it can be used as written evidence with Senators and Congressmen to show joint support and undo oral statements made previously by Chairman Selin.

Option 2: Prepare a white paper on DOE and NRC support of the provisions of S. 1220. Have Governor Sununu seek Chairman Selin's agreement with white paper.

Not only that, he says I have attached what that white paper would be like, and all we need are the joint signatures on it.

The pros of that:

Chairman Selin might more quickly fall in line for Governor Sununu than he would for Admiral Watkins.

Option 3: Have Senator Johnston hold a hearing to obtain Chairman Selin's agreement with the provisions of S. 1220. * * * Have Governor Sununu speak to Chairman Selin in advance.

But I say to the Senator from Louisiana, they do not like that option very much because Chairman Selin may be more responsive to the Senator, it says in the pros, than to Sununu, saying that Chairman JOHNSTON is probably going to be a little more reasonable in his approach and not order him to do so. I think that speaks well of the Senator from Louisiana.

Option 4: Have Senator Johnston write to Chairman Selin and seek support for the provisions of S. 1220.

This probably could not be influenced by DOE as much and it is unlikely they will do that.

That is one of the suggestions here by Assistant Secretary Young.

Option 5: Have Governor Sununu tell Chairman Selin to say nothing further to the Congress than support of S. 1220 and its specific provisions. Ignore the past.

We are talking about nuclear regulation, about things nuclear. These plants produce the most poisonous substance known to man, plutonium. We have an Assistant Secretary writing saying here are the alternatives.

It would be nice if this story had a happy ending, that we learned this independent NRC was truly independent and Chairman Selin told Secretary Young to take these five suggestions and throw them in the garbage can. But the sad part about it is that Chairman Selin capitulated.

To show further proof of his capitulation, I ask unanimous consent that these, along with the memo from Secretary Young, be made part of the RECORD. We have a letter. Listen to the dates on these two letters, August 1, and August 1, letter to Watkins from Selin; and a letter from Selin to Watkins. I ask unanimous consent that they be made a part of the RECORD.

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

THE SECRETARY OF ENERGY,
Washington, DC, August 1, 1991.

Hon. IVAN SELIN,
Chairman, Nuclear Regulatory Commission, Washington, DC.

DEAR MR. CHAIRMAN: The purpose of this letter is to discuss support by the Nuclear Regulatory Commission (NRC) of the nuclear licensing reform provisions of the National Energy Security Act of 1991, S. 1220, sponsored by Senators Johnston and Wallop and reported by the Senate Energy and Natural Resources Committee.

On June 26, 1991, the NRC sent identical letters to various Senate Committee Chairmen and ranking members commenting on the nuclear licensing provisions (Title IX) of S. 1220. The letters state, in part, that the Commission believes that "while legislation to validate Part 52 may not be required, if the Congress determines that further immediate version of the nuclear licensing process, beyond that provided by Part 52, is necessary through S. 1220, the Commission would support and endorse that legislation." Further, the Commission calls the provisions of S. 1220 a "fair and efficient process" that ensures "fair and adequate access by the public to raise any concerns about plant safety." I understand that the Commission was unanimous in reaching the above position on S. 1220 at the time.

During your testimony before the Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs on July 25, 1991, you reiterated the Commission's support for S. 1220 as it now stands. However, you proceeded to say that this type of legislation is not really needed, and that significant changes might occur between initial drafting and final passage. You also told Subcommittee Chairman Kostmayer that the NRC would support certain changes in the provisions of S. 1220.

Of course, you are always free to express your views to the Congress in any way you choose. However, I believe that on a matter as important to the Nation as the future of nuclear power, I should also make perfectly clear to you the reasons for the Department's position on S. 1220, which is supported by the Administration.

I understand your concern that nuclear licensing reform legislation faces an uncertain future in the Congress. I also understand the NRC's belief that the provisions of Part 52 may be a sufficient new licensing basis for standardized nuclear power plants. However, our analysis, approved by the President as part of the National Energy Strategy, is that Part 52 will not be sufficient to provide a licensing process that will enable investment in new nuclear generating capacity.

Accordingly, the Administration has determined that nuclear licensing reform provisions such as those contained in S. 1220, which adopt and further build upon Part 52, are necessary if nuclear energy is to be an option for new power generation in the United States. We firmly support enactment of Title IX of S. 1220 as a necessary component of acceptable, comprehensive energy legislation. I can assure you that the Department

will not support nuclear licensing legislation from the Congress that is not fully acceptable.

I also understand that in the course of your testimony on July 25, 1991, you indicated that the NRC would agree to changes in the language of S. 1220 with respect to the threshold for holding post-construction hearings and in the wording that the Commission shall, prior to operation of a nuclear power plant, satisfy itself that the prescribed construction acceptance criteria are met. The Department does not agree that such changes should be made. At the same time, the Department concurs in the NRC's understanding that the provisions of S. 1220 do not diminish the discretion that the Commission currently has under existing statutory authority to make safety determinations on its own initiative.

I believe it is important that the current provisions of S. 1220 be retained. Accordingly, I request that the NRC not negotiate changes in the provisions of S. 1220 or the Administration's National Energy Strategy Act in interactions with the Congress. As you know, any nuclear licensing legislative provisions proposed to be supported by the Administration have been, and will be, made available for review by the NRC in advance to determine their acceptability.

After you have considered the Department's views in this letter, I would appreciate being advised of whether you will continue to support the position previously taken by the NRC on the nuclear licensing reform provisions of S. 1220 in its letters of June 26, 1991.

Sincerely,

JAMES D. WATKINS,
Admiral, U.S. Navy (Retired).

NUCLEAR REGULATORY COMMISSION,
Washington, DC, August 1, 1991.

Hon. JAMES D. WATKINS,
Secretary of Energy,
Washington, DC.

DEAR MR. SECRETARY: We appreciate the concerns behind your letter of August 1. The Commission recognizes that judgments may differ on the adequacy of a statute versus a rule as the basis of our common goal of streamlining the licensing of future plants. We respect your judgment that a statute might be needed to encourage new investment in nuclear power plants.

At the same time we are pleased with your assurance that the Department will not support unsatisfactory nuclear licensing legislation. In such a case Rule 52 could be our only vehicle. Therefore, we are also pleased that your letter notes that S. 1220 adopts and builds upon Part 52, reflecting the Administration's support for Part 52 as far as it goes. In fact, we are able to support S. 1220 as it currently stands because overall it appears to us to be compatible with Part 52, providing the Commission with flexibility that we believe to be necessary to carry out a licensing program ten or more years in the future.

As we have indicated in our previous comments on this legislation, it is particularly important that this legislation not circumscribe the Commission's authority, currently contained in section 185 of the Atomic Energy Act, to make an overall safety finding upon the completion of construction and prior to operation of a nuclear plant that it will operate in conformity with the provisions of the Atomic Energy Act, and the rules and regulations of the Commission. In this context, we are quite pleased at your affirming the Department's reading that the provisions of S. 1220 do not diminish the discretion of the Commission to make these safety determinations under our own initiative.

In response to the two specific questions which you pose in your letter:

1. The Commission does not have, and has never had, the intention to negotiate changes in S. 1220, and

2. The Commission continues to support our previous position on the nuclear licensing provisions of S. 1220, as stated in our letters of June 4[1] and June 26,[2] 1991.

The Commission hopes that this letter clarifies our position and will help to maintain a common thread with the Administration and single-step licensing in the future.

Sincerely,

IVAN SELIN.

[1]Letter to the Honorable Bob Graham signed by Acting Chairman James R. Curtiss.

[2]Letter to the Honorable Peter Kostmayer signed by Acting Chairman Kenneth C. Rogers.

DEPARTMENT OF ENERGY,
Washington, DC, September 24, 1991.

Memorandum for: Admiral Watkins.

Subject: Chairman Selin and Nuclear Licensing Reform Legislation.

PURPOSE

The purpose of this memorandum is to apprise you of a continuing problem with comments by Chairman Selin of the Nuclear Regulatory Commission (NRC) to Members of Congress regarding the nuclear licensing provisions of Title IX of S. 1220 and to suggest several possible courses of action to you.

BACKGROUND

During your staff meeting on September 20, 1991, I advised you that remarks by Chairman Sharp of the House Energy and Power Subcommittee during a markup session on prospective energy legislation indicated that Chairman Sharp has recently talked to Chairman Selin on certain provisions of Title IX of S. 1220. In Vienna, I asked Chairman Selin about his conversation with Chairman Sharp. Selin made the following remarks to me:

While he supports S. 1220, he still considers legislation a mistake; had he been chairman when the Administration proposed legislation, he would have opposed it.

Industry representatives and former NRC Chairman Rowden recently met with him and explained why S. 1220 is needed from their standpoint and how it differs from Part 52. He rejects all their arguments (and those of DOE) and considers that Title IX of S. 1220 is no different than Part 52 and, therefore, is not needed. He believes Part 52 is "good enough" and that any legislation should merely codify it.

He did talk to Chairman Sharp about a key provision of S. 1220 that would permit a completed plant to operate during the tendency of a hearing unless the Commission found that public health and safety would be affected (a provision that specifically differs from Part 52). He told Chairman Sharp that if NRC went to the trouble of granting a hearing, he couldn't conceive of allowing a plant to operate before the hearing was completed.

It is clear that while Chairman Selin gives lip service to support of S. 1220, he is—opportunistically, if not systematically—undermining the key provisions of S. 1220 in conversation with Congressional Democrats who are not nuclear supporters. It seems likely that Chairman Selin's agenda is to end up showing that Part 52 is really all that anyone needs.

Before suggesting possible actions we might take, I believe that NRC actions before and after Chairman Selin arrived and his other comments on the provisions of S. 1220 should be reviewed briefly. The NRC has always been concerned about legislation lest it harm its current court defense of Part 52 against challenge by the anti-nuclear movement. During the interagency review process for our proposed National Energy Strategy (NES) Act, Chairman Carr called me to say that his General Counsel had problems with some of our wording. We worked with NRC, and they concurred in our legislation proposed to the Congress.

During markup of S. 1220 by the Senate Energy and Natural Resources Committee in May 1991, the majority staff raised the possibility of inclusion of the word "finding" as the action required by the Commission after construction but before initial plant operation. This matter requires some explanation. Under the old licensing procedure, the Commission, after holding a hearing upon request at the end of construction, reached its final safety decisions and made a finding that the plant complied with the terms of its license, NRC regulations and the Atomic Energy Act. The thrust of Part 52 and S. 1220 is that such a hearing and finding is required before construction and before issuance of a combined license. Prior to plant operation, the Commission would only have to determine that the acceptance criteria of the combined license had been met during construction. There would be an opportunity for a hearing on nonconformance to the acceptance criteria, but not a required hearing.

The basic thrust of the anti-nuclear litigation against Part 52 is to require the NRC to hold a hearing after construction and before operation and to make a finding not only on conformance to the acceptance criteria, but to compliance with the license, NRC regulations, and the Atomic Energy Act. This would guarantee anti-nuclear interveners a pre-operational hearing and would open up the opportunity for them to litigate issues settled before construction, thus thwarting one-step licensing and deterring any potential investors in a nuclear plant.

For that reason and out of concern for unintended consequences, we have avoided in S. 1220 the requirement for NRC to make a finding after construction. At the same time, we have recognized that NEC, on its own initiative, retains under the Atomic Energy Act and its regulations the ability to make such a finding should it consider one necessary. Thus, when the question arose during markup of S. 1220 about including the word finding in the bill, alternative words that the Commission shall "satisfy itself that the acceptance criteria of the license have been met" before operation were proposed. At my request, Chairman Carr convened a Commission meeting to establish the NRC position on this point, and by a 3–1 vote supported the alternative words, which were included in S. 1220.

Subsequent to that event, I met with Chairman-designee Selin before his confirmation and discussed S. 1220 with him. He told me that he had no problem with any of the provisions of S. 1220 and could support them, but did not consider legislation to be necessary or desirable, since Part 52 was sufficient. He felt that legislation could undermine Part 52 and that we are likely to get something worse than Part 52 out of the Congress. I summarized our position. Further, after that conversation, you met with Selin and gave him point papers explaining the differences between Part 52 and S. 1220 and the need for legislation.

I also asked Chairman Carr if the Commission would send a letter to the Congress be-

fore his term expired, supporting Title IX of S. 1220. Such a letter was sent on June 26, 1991, and was based upon a unanimous vote, 4-0, by the Commission. The one Commissioner who had cast a negative vote on the finding question told me that the report language accompanying S. 1220 cleared up any concerns that he had on that point.

The next development regarding S. 1220 occurred in conjunction with Chairman Selin's testimony before Chairman Kostmayer of the House Subcommittee on Energy and the Environment on July 25, 1991. In his written statement, after expressing the Commission's support for S. 1220, Chairman Selin volunteered his opinion that this type of legislation is not really needed. I understand that he was told not to include that opinion in his oral statement, but Chairman Selin did so anyway. Further, in response to questions from Chairman Kostmayer, Chairman Selin expressed his disagreement with important provisions of S. 1220, as follows:

Chairman Kostmayer asked whether Chairman Selin disagreed with the Administration's and S. 1220's provision of a threshold for holding a pre-operational hearing and whether he would support removal of the threshold. Chairman Selin said yes, he disagreed, and he would support removal of the threshold in favor of leaving the Commission discretion to decide.

Chairman Kostmayer asked whether the Commission should make a pre-operational "finding" as opposed to "satisfy itself that" and whether Chairman Selin would support the deletion of "satisfy itself that" and the substitution of "finding." Chairman Selin stated that the Commission should satisfy itself by making a finding and that they would operate the same way whatever phrase was used in legislation.

Chairman Kostmayer stated that it seems to him that a formal pre-operational hearing (as opposed to the informal hearing specified in S. 1220) is useful because it guarantees the public certain procedures to elicit information which they don't have without a formal hearing. Chairman Selin replied that he would like to agree with Chairman Kostmayer, but his colleagues wouldn't let him do it.

In the exchange of letters between you and Chairman Selin on August 1, 1991, he agreed to delete a sentence in his draft reply that addressed the Commission's authority to make a broad safety finding after construction and prior to initial operation of a plant. We obtained that deletion by including in your letter a statement that S. 1220 does not reduce the Commission's existing discretion and authority to make safety determinations. After he received your signed letter, Chairman Selin reinserted in his reply the sentence that he had agreed to delete.

DISCUSSION

My next interaction with Chairman Selin on nuclear licensing reform came in connection with his remarks to Chairman Sharp, which have been described above. I believe that the summary I have just provided demonstrates that Chairman Selin is undermining the important provisions of S. 1220 even as he professes support for that legislation. I have no doubt that his concessions to Democratic legislators will be used against S. 1220 on the Senate floor and will make it more difficult for us to gain the support of Senator Graham (Chairman, Senate Subcommittee on Nuclear Reactor Regulation) for S. 1220 Senator Graham's position has been that S. 1220 is not desirable and that Part 52 should be acceptable. Chairman Selin's concessions will also harm us if nuclear licensing reform legislation comes to a vote in House committees and on the floor. I do not know who else from the Congress that Chairman Selin might have talked to or what he might have said.

I believe that some action should be taken to obtain an unequivocal written or public statement from Chairman Selin supporting the specific provisions of S. 1220 as well as the bill itself before S. 1220 comes to the Senate floor. I have outlined below several options for doing that and have summarized what I see as their pros and cons.

Option 1: Seek Chairman Selin's Signature on a Joint Statement With Admiral Watkins in Support of the Provisions of S. 1220. (A draft such statement is attached for consideration.) Seek Governor Sununu's Action on Unresolved Issues.

Pros: Can be used as written evidence with Senators and Congressmen to show joint support and undo oral statements by Chairman Selin.

Can be negotiated with him in advance, before his interaction with Admiral Watkins, to minimize differences to resolve.

If differences cannot be resolved, would at least minimize issues needing action by Governor Sununu.

Cons: May be impossible to reach agreement with Chairman Selin on such a statement, or may take too much time and argument.

Has potential appearance that DOE has forced NRC to support S. 1220.

Option 2: Prepare a White Paper on DOE and NRC Support of the Provisions of S. 1220. Have Governor Sununu Seek Chairman Selin's Agreement with the White Paper. (The White Paper would be like the attached statement, with the joint signature concept removed.)

Pros: Chairman Selin might more quickly fall in line for Governor Sununu than he would for Admiral Watkins.

Would most quickly show Governor Sununu what the problems with Chairman Selin are.

Would still provide a written statement for use with the Congress, although not signed.

Cons: Does not minimize the issues that Governor Sununu may have to resolve.

Option 3: Have Senator Johnston Hold a Hearing to Obtain Chairman Selin's Agreement With the Provisions of S. 1220. Show Senator Johnston Our White Paper From Which to Frame Questions. Have Governor Sununu Speak to Chairman Selin in Advance.

Pros: Chairman Selin may be more responsive to Senator Johnston than to the Administration. Transcript could be edited for Senate floor use.

Cons: What Chairman Selin might say in public is very unpredictable.

Chairman Selin could portray himself as protecting the public against the desires of the industry and the Administration, which could harm support for S. 1220.

Could cause Senator Graham to hold a hearing as well, which could have different results and polarize the Senate situation further.

Option 4: Have Senator Johnston Write to Chairman Selin and Seek Support for the Provisions of S. 1220.

Pros: Would provide a written set of positions.

Cons: Answers probably could not be influenced by DOE and are unlikely to be what we want.

Option 5: Have Governor Sununu Tell Chairman Selin to Say Nothing Further to the Congress Than Support of S. 1220 and Its Specific Provisions. Ignore the Past.

Pros: Probably the simplest thing to do.

Cons: Does not repair the damage already done.

Chairman Selin would probably find a way around this as he has in the past.

Does not provide positive NRC support at a time when that would be helpful.

RECOMMENDATION

I recommend that an internal meeting be held to discuss the above options. I suggest that Senators Johnston and Wallop or their staffs attend to obtain their views. On balance, at this point I favor Option 1 and escalating it quickly to Governor Sununu if we have trouble reaching early agreement. Chairman Selin is currently on travel and returns on September 26.

WILLIAM H. YOUNG,
Assistant Secretary
for Nuclear Energy.

JOINT STATEMENT OF THE DEPARTMENT OF ENERGY (DOE) AND THE NUCLEAR REGULATORY COMMISSION (NRC) ON LICENSING REFORM LEGISLATION

SUMMARY

Both DOE and NRC support and endorse the licensing reform provisions of Title IX of S. 1220. S. 1220 will codify major licensing provisions of existing NRC regulations (10 CFR Part 52) and will provide additional flexibility, described below, not possible under existing statute but needed to facilitate the combined license concept. S. 1220 provides an efficient process that ensures fair and adequate access by the public to raise any concerns about plant safety. S. 1220 does not reduce the discretion NRC has under existing authority to take steps it deems necessary to protect the public health and safety, including making safety determinations on its own initiative. Neither DOE nor NRC would support modifications to S. 1220 which would undo the progress made to date as reflected in Part 52 or would substantially alter the provisions of Title IX.

NEED FOR LEGISLATION NOW

The National Energy Strategy (NES) identifies the need for licensing reform to provide a predictable regulatory basis for the consideration of new nuclear plants by potential owners and investors. The NRC has acted to significantly improve the licensing process by assurance of Part 52. However, current court challenges and probable appeals thereon are likely to delay final resolution of the legal status of Part 52 until at least mid-1994. Further, the features of Part 52 are limited by provisions of current law and do not contain certain key features found necessary by DOE, in its NES analysis, to enable investment in new nuclear generating capacity. Even after enactment of licensing reform legislation, implementing NRC rulemaking will take an additional 18 months. Court challenges would add to that time.

PRINCIPLES

DOE is responsible for ensuring that safe, adequate, and secure energy supplies are available to meet our Nation's needs. NRC is responsible for ensuring that the health and safety of the public are adequately protected during operation of civilian nuclear reactors.

S. 1220 meets both of these objectives by providing the necessary framework to enable construction of new nuclear powerplants, while ensuring that the public is both protected and has the opportunity to participate in the licensing process in a timely manner.

S. 1220 is based on two key principles—resolution of safety issues by the NRC before

construction begins and determinations thereafter based upon reasonable assurance of adequate protection of public health and safety. This standard has been the long-standing basis for NRC decisions, which have led to an unparalleled safety record in the operation of U.S. commercial nuclear power plants for more than 30 years.

S. 1220 LEGISLATIVE FEATURES

S. 1220 reaffirms NRC's statutory authority for Part 52 which has been challenged in the courts and could be challenged again in the future during implementation of specific features of Part 52. As an example, those opposed to nuclear power and the concept of combined licenses claim in the current court challenge to Part 52 that "the plain language of Section 185 bars the issuance of combined licenses." S. 1220 would add new sections to the Atomic Energy Act, Sections 185b and 189a(1)(B), which provide more specific legislative authority for the issuance of combined licenses and for the nature, scope, and timing of potential post-construction hearings. The Major improvements provided by S. 1220 are shown below.

REQUIRED NRC DETERMINATION PRIOR TO OPERATION

S. 1220 requires that prior to operation, the NRC must satisfy itself that the prescribed acceptance criteria have been met. Part 52 requires that the Commission find that the acceptance criteria have been met. The NRC internal process under either of these two requirements would be identical. However, the use of the term "satisfy itself" rather than "find" in S. 1220 is intended to make it clear that a hearing is not required for the Commission's determination. Otherwise, precedent under the former licensing process might lead to an interpretation that a hearing is rerquired. The public is protected since a hearing will already have been held to resolve safety questions prior to issuance of the combined license and they may request a hearing on any specific nonconformance with the acceptance criteria.

THRESHOLD REQUIRED FOR POST-CONSTRUCTION HEARINGS

S. 1220 requires the NRC to hold a hearing only when it can be shown that adequate protection of the public health and safety is not reasonably assured. Under Part 52, NRC may be required to hold a hearing on nonconformances with the acceptance criteria in the license if the exemption criteria of the Administrative Procedures Act are not met. These criteria, however, deal not with the seriousness of potential consequences, but with the nature of the process NRC uses to determine conformance. S. 1220 will, therefore, ensure that operation of safe plants would not be delayed by technicalities. The public will be protected since hearings would be held if there is a threat to adequate protection of public health and safety.

HEARING PROCEDURES

Under S. 1220, post-construction hearings would normally be informal; however, the NRC can determine that formal procedures are necessary to resolve a substantial dispute of material fact. Under Part 52, the criteria for use of formal or informal procedures are complex and include the Administrative Procedures Act exemption criteria. S. 1220 provides the public and investors with better definition of the expected process and avoids legal use of technicalities for purposes of delay. At the same time, S. 1220 provides the discretion needed by NRC.

HEARING DURATION

S. 1220 specifies a target duration of the hearing process of 120 days, while Part 52 is silent on hearing duration. This provision establishes the intent that hearings be completed in a timely manner, thereby not unduly delaying generation of electric power needed by the public. At the same time, it allows hearings of greater duration than 120 days if necessary.

OPERATION PENDING HEARING DECISION

S. 1220 permits the NRC to allow a plant to commence operation even though a hearing process is not completed, if there is no threat to reasonable assurance of adequate protection of public health and safety by such operation. Part 52 has been interpreted to require that all hearings be completed prior to operation. The S. 1220 provision is necessary to ensure that safe plants will be allowed to operate without undue delay. A lengthy delay of operation to complete a hearing could otherwise occur even if the Commission determined early in the hearing process that adequate protection of public health and safety was not threatened. The public is protected since operation would not commence if there was a threat to adequate protection.

EMERGENCY PLANNING TESTS

S. 1220 requires that an emergency plan be approved prior to issuance of a combined license and that the necessary tests of the plan be included in the acceptance criteria in the license. Existing NRC regulations (Parts 50 and 52) require a separate mandatory hearinig on the emergency planning test. Emergency planning tests are treated in S. 1220 in a manner similar to all other acceptance criteria. The public is protected, since any nonconformance of the test results to the acceptance criteria that could be shown to threaten adequate protection of public health and safety, would be subject to a hearing and delay in commencement of plant operation.

AMENDMENTS TO COMBINED LICENSES

S. 1220 treates amendments to combined licenses the same as amendments to operating licenses. Under Part 52, the Sholly Amendment does not apply to amendments to combined licenses. As a result, under Part 52 amendments with no safety significance could delay plant operation. The public is protected under S. 1220 since amendments to combined licenses could not be granted pending a hearing if there are significant safety considerations.

ADM. JAMES D. WATKINS,
Secretary, Department of Energy.
IVAN SELIN,
Chairman, Nuclear Regulatory Commission.

Mr. JOHNSTON. Will the Senator yield?

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

Mr. JOHNSTON. Is it not correct that Chairman Selin testified before the Nuclear Regulation Subcommittee that he was never approached by, and never communicated with, Assistant Secretary Bill Young, and he was in no way influenced by him, not having been approached or communicated with?

Mr. REID. I am happy that my friend from Louisiana said that with a straight face.

Yes, we took testimony and he said he did not speak to Assistant Secretary Young. But remember, Assistant Secretary Young is not the one that was going to be the hatchet man. He had a number of alternatives.

I do not know why Selin capitulated. I do not know whether it was because Sununu told him to. I do not know really how it came about. There are five options. But the fact of the matter is that Selin suddenly changed his mind.

As further evidence, I say to the distinguished Senator, Chairman of the Energy Committee, we have two letters. They did not even bother waiting until the next day to put this in writing. Each one is written the same day. They do not even take an hour delay until they write another letter about it.

Mr. JOHNSTON. I think in fairness to Chairman Selin, the Senator was suggesting that on account of the influence of Assistant Secretary Bill Young that he changed his testimony and it has been spread on the record in subcommittee in which the Senator is a member, that he was not communicated with in any way, and he was not influenced in any way. I just wanted the record to show that.

Mr. REID. I appreciate the question from my friend from Louisiana.

Prior to coming here to this body, I was a trial lawyer. For many, many years I tried lawsuits.

As I told Selin, this is not a lawsuit, but if this matter were being tried before a jury he would not stand a chance. The evidence is overwhelming that the Nuclear Regulatory Commission is not independent as evidenced by these exhibits.

I mean it is clear that during the hearing Chairman Selin said, "This is a study, I decided to change my mind."

I ask the Members of this Senate to use their common sense to find out what in fact is the truth, because during the hearing before the Subcommittee on Nuclear Regulation, we documented a series of instances during this time when legislation was under consideration where the Nuclear Regulatory Commission was pressured, I believe intimidated, and I use the word, I have chosen the word "cowered" by the Department of Energy to support the nuclear licensing provisions in this title.

An independent, alternate, responsible NRC is the cornerstone of a well-regulated nuclear industry. In the words of NRC Chairman Selin during his confirmation hearing, the NRC's mandate is exclusively regulatory. It is in fact not promotional.

Mr. President, the provisions of title IX remove the voice of the common man. It is a right of concerned citizens to enjoin the NRC to prove that new facilities are safe. The licensing provisions of S. 2166 strongly curtail the hearing rights supported by the public and limit the review of many NRC decisions by the courts.

The NRC's support of S. 2166 shows this agency can be pressured to change its position on nuclear licensing provi-

sions, a subject totally under the NRC's jurisdiction and authority.

Nuclear licensing must be conducted in the open process with the full airing of all safety issues whenever they are brought to light. A new plant, where constructed with safety deficiencies, no matter how serious the provisions of title IX, would allow the NRC's nonreviewable discretion of whether to allow an adjudicatory hearing. Should a contractor wish to abuse the system, title IX would allow them to steamroller over any concerned citizens groups or whistle-blower groups, or whistle blowers, or any individual.

The amendment under consideration spells out in plain language the postconstruction hearing process. It allows an adjudicatory hearing which would be subject to judicial review. This provision allows the voice of concerned citizens to be heard on this critical issue of health and safety.

It is better to tell the Nuclear Regulatory Commission how to perform its job in this instance rather than allow that agency to be coerced again in the future by the Department of Energy. Health and safety should be our watchwords, not further streamlining and speeding up the process.

If in fact, by some quirk of fate, the NRC was not coerced into changing their position radically in this, I think in the future they better be very careful of the paper trail that is left that is shown that they were intimidated and were forced to change their position by the administration and/or Admiral Watkins.

I again congratulate my friend from Florida for the courage that he has had to lead this vitally important subcommittee and offer this most important amendment.

I would suggest, and I am sure the Senator will cover this, there are many who want the procedure to be even more difficult than they are now. But I think it showed great concern for the process in that during the appeal process the plant could still operate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. I thank the Senator.

I say to my colleagues that the significance of what the Senator from Nevada has just placed before us is the issue of the credibility and the independence of the agency that the American public looks to make judgments on the future of the nuclear industry.

The facts are that consistently until a date less than 12 months ago the position of the Nuclear Regulatory Commission had been that legislation was not desirable. Just as an example of the testimony which the Nuclear Regulatory Commission was giving, let me quote from statements made before the House Subcommittee on Energy and Power, in May 1989:

> The Commission is confident that the final rule as presently structured provides a sound basis for the efficient construction and licensing of new safe nuclear power plants. The Commission is confident that the final rule rests on a sound legal foundation and would fully accomplish its purposes. The Commission believes that it is necessary to give the rule an opportunity to work. Accordingly at this time, we do not believe that additional legislation is necessary to accomplish the objectives of the Commission's recently approved standardization and licensing reforms.

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. GRAHAM. Yes.

Mr. JOHNSTON. Of course, since that letter was written, the court, in fact, found that it would not stand on the firm legal foundation and consequently the rule cannot be allowed to operate as they suggest because D.C. Circuit has declared that rule beyond the Atomic Energy Act of 1954. Is that correct?

Mr. GRAHAM. It is correct that that historically happened, but the court of appeals decision did not change the position of the Nuclear Regulatory Commission relative to the desirability of legislation.

Just to quote the NRC subsequent to the opinion of the D.C. Court of Appeals, a letter from Harold Denton of the NRC to Olin Wethington, Executive Secretary of the Economic Policy Council in the White House, commenting on the President's draft national energy strategy, which contained nuclear licensing provisions:

> The Commission supports standardization and early site approval * * * and licensing renewal. However the Commission does not believe that the licensing reform legislation as discussed on page 8 of nuclear power section is desirable at this time.

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. GRAHAM. Yes.

Mr. JOHNSTON. I have a letter dated February 5 from the Chairman and submitted on his behalf and all other Commissioners, except Commissioner Remick, who is away on official travel, and in that he said in response to the request of the Nuclear Regulatory Commission:

> I would like to take this opportunity both to express our support for the nuclear licensing reform provisions of S. 2166, as introduced in the National Energy Security Act of 1992, and our opposition to an amendment to S. 2166, which we understand might be proposed by Senators GRAHAM and FOWLER.

Has the Senator seen the copy of that?

Mr. GRAHAM. There is no question that NRC changed its position. The question is under which circumstances, and what those circumstances say about the NRC's discretion. When we start to discuss the principal differences between the first- and second-degree amendments, the principal difference is going to be the issue of how much discretion to provide to the NRC to either grant or not grant a full hearing on questions of safety of a nuclear powerplant.

Mr. JOHNSTON. Well, the main thing that is transferred between the date of that testimony and today is that the court has declared their rules that they were trying to uphold to be illegal in part.

Mr. GRAHAM. Here is what Commissioner Curtiss of the NRC said on March 21 of 1991 in response to questions from Chairman BEVILL, of the Subcommittee on Energy and Water Development of the House Appropriations Committee.

> I would say with respect to one portion of 100 CFR part 52, that was declared invalid by the court, having to do with the so-called preoperational hearing, I think at least at this point that legislation on this particular matter would be premature until we have exhausted the judicial avenue.

That was the position their Commissioner was taking at least as recently as March 22 of last year, well after, and in fact, in specific response to the traditional opinion. Now the Commissioner supports legislation.

Mr. WALLOP. Will the Senator yield for a question?

Mr. GRAHAM. Yes.

Mr. WALLOP. Of course, the Senator is well aware that his predecessors, Senators BREAUX and SIMPSON, are cosponsors of the underlying amendment. Not only did they testify to you in January of this year, but the NRC, in letters dated June 26 and August 1, by unanimous vote, expressed its endorsement of provisions of S. 1220, and this was before the memo written by Mr. Young.

Mr. GRAHAM. Well, there had been a previous memo from Mr. Young. A memo quoted and entered into the RECORD by the Senator from Nevada is not the only evidence of Department of Energy influence on NRC. There is more evidence of the advocacy agency's attempt to influence the Nuclear Regulatory Commission, supposedly the independent regulatory body.

As I understand the history of this evolution, when the Atomic Energy Commission was divided, its responsibilities were split: One agency, what is now the Department of Energy, was to be the agency which had the responsibility for the development of the nuclear industry. The Nuclear Regulatory Commission was to be an independent regulatory agency which would be responsible for making judgments to protect the public safety. And the question here is whether the NRC's independence has been compromised.

The Senator asked about the timing of the NRC's change in position. Let me read from a May 6, 1991, memo from Bill Young, Assistant Secretary of the Department of Energy, to the then NRC Chairman, Mr. Kenneth Carr:

> I would like to ask your assistance in coordinating the NRC and DOE positions on possible licensing reform legislation. I ask that the Commission take the following positions: A, the NRC supports the provision of title V(A) of S. 570, H.R. 1301, and would have

no objection to their enactment. B, the NRC also supports the provision of title VIII of S. 341, as amended by Senator Wallop, now title IX of S. 1220, and would also have no objection to their enactment. I ask that the NRC treat the bills as legislative packages and not express opinions on the efficacy of individual elements, such as emergency planning, that have already been incorporated.

That is more evidence of where the DOE is attempting to blur the distinction between its advocacy role and the responsibility which the NRC has to make independent judgments regarding public safety.

Mr. WALLOP. If the Senator will yield further, in fact, the memo that he has just read indicates clearly that the matters under discussion were matters of policy and not safety and, therefore, clearly within the appropriate activities of both the NRC and DOE, under the terms of their foundation.

Mr. GRAHAM. I do not believe that it is appropriate for the Nuclear Regulatory Commission to feel that its role is to cooperate with the Department of Energy in developing legislative policy, and that it should be subjected to a pattern of intimidation to repress its independent views and assessments. That is not why we have the NRC. That denies the NRC the ability to perform its independent function, and it undercuts public confidence in its regulatory activity. Is it acting out of an intimidation from some external source, or is it acting based on its own assessment of what is in the public interest?

Mr. President, that gets us to the issue that is raised by these two amendments. Let me point out that the bill that the NRC has stated for the last several weeks it supports is a bill that is even being abandoned by the first-degree amendment. If you would believe this, Mr. President, that proposal would have authorized the Nuclear Regulatory Commission to have allowed a plant against which had been lodged a safety concern to have gone into operation, unless the NRC could affirmatively prove that it was unsafe to do so.

All parties have now agreed that that was a very misguided standard and placement of responsibility for burden of proof, because the first-degree amendment, as offered by the Senator from Louisiana, proposes to change that language in a manner which is consistent—if not verbatim—with the language that has been in my amendment, which is now second degree, which says that the burden of proof is on the Nuclear Regulatory Commission to establish that the plant is affirmatively safe, because it has been built according to plans and the NRC's regulation. And only when the NRC makes that affirmative judgment of safety will the plant be allowed to operate. The fact that the NRC would have given its support to a provision that would have allowed a plant to go into operation without it having met that obligation of certifying its safety, I think, is a further testimony to the issue of confidence and the deterioration of public credibility which the NRC has suffered throughout this process.

Mr. President, let me focus on the fundamental issue which distinguishes the first- and second-degree amendments. That is the issue of under which circumstances would a citizen who believed that there has been some defect in the construction of a nuclear plant be allowed to have a full hearing and judicial review for the purposes of making that determination?

The language that is in the first-degree amendment is that, "The commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under this subparagraph, and shall state its reasons therefor."

So it is totally at the discretion of the Nuclear Regulatory Commission as to whether they will grant a hearing and, if so, what will be the character of that hearing.

What is in the second-degree amendment? The second-degree amendment provides that there will be a right to a hearing if the petitioner can meet this following standard—and I would ask, Mr. President, that you and our other colleagues listen to these standards with this question in mind: If a petitioner can meet all of these standards, am I prepared to say that they should not have a full adjudicatory hearing?

What are these standards? The Commission shall designate and issue for hearing if the issue, one, consists of a substantial dispute of fact; two, that the resolution of that dispute of fact is necessary for the Commission's decision, the decision on the safety of the plant, and that fact cannot be resolved with sufficient accuracy except at such a hearing.

The issue has to be substantial. The issue has to relate directly to the Commission's obligation to make a judgment on the safety of the plant. And the issue has to be of such a nature that it cannot be resolved with sufficient accuracy except at a hearing.

Beyond that, Mr. President, in addition to all those tests, it must be that either the issue was not and could not have been raised and resolved at any proceedings for the issuance, modification, or amendment of a license permit or approval; that is, this was an issue that could not have been raised at an earlier stage in the process, or there must be a showing has been made that there has been nonconformance with the license and that such nonconformance has not been corrected and that such nonconformance could materially and adversely affect the safe operation of the facility.

Mr. President, I would not like to go back to my constituents and say that I had taken the position that a petitioner who could meet all of those rigorous steps would be denied, in the total discretion, the total whim of the NRC, the right to have that full hearing and to have the results of that full hearing then subject to judicial review.

I would not like to be the one who would then have to explain at a future date to my citizens why, if all of those conditions could be met, they could not have a full public airing of an issue of vital concern, as it certainly would be to that community, that State, and to our national efforts at making nuclear power a responsible part of our total energy system.

That language that I read may have sounded relatively stilted and legalistic. Mr. President, creativity is described as the art of disguising your sources. I want you to know that I was not creative. I did not write those words. Who wrote those words? Those words were written by the Nuclear Regulatory Commission, because that was their legislative recommendation of how to resolve this issue of the balance between certainty and predictability of a licensing process but still allowing the public a limited opportunity with the high threshold to have a full hearing of cases of allegations of unsafe construction or circumstances that would raise questions about the appropriateness of the operation of the plant.

That was the language that the NRC, session after session, advocated Congress to adopt. It was language which had the general, if not unanimous, support of the nuclear industry as to how they would like to have this issue resolved.

Now, the concern that has been expressed is, well, even if you can meet that high threshold, there might be circumstances under which it would be appropriate for a plant to be allowed to be operated before that proceeding had reached its conclusion. And I think it is possible that could be the case. So, we have provided, as has the first-degree amendment, for an operating permit pending the resolution of the adjudication.

What we have said, and now with the abandonment of that earlier language that would have required the petitioner to show that the plant was unsafe, what we have now said is that if the NRC can determine that the plant was built in accordance with the plans, and the NRC regulations, that the NRC will have the authority to allow a plant to commence operation while the dispute is being resolved.

I think that is a fully reasonable resolution of this issue. There are many—and I believe some may be prepared to debate during the further consideration of these amendments—that believe our amendment goes too far, that if a petitioner can meet all these high thresholds for a full adjudicatory hearing, that the NRC should not allow the

plant to operate under any circumstances until those safety issues have been resolved.

I believe that the position that we have advocated is one which is a reasonable balance of the public's right to have access to a full hearing on issues of vital concern, legitimate concern, against the desire for a level playing field of predictability within the nuclear industry.

Mr. President, that is the issue. The issue is do you want to return to your constituents and say that if the citizen of your State, on the eve of the opening of a nuclear power plant, is about to go to the Nuclear Regulatory Commission and establish that there is a prima facie case that this facility was not built in conformance with the license and that nonconformity has not been corrected, and that nonconformity materially and adversely affects the safe operation of the facility, if that citizen can establish that this issue could not have been raised at an earlier proceeding and that issue is substantial and necessary for the Commission's resolution and can only be sufficiently resolved through the method of a full, open, adjudicatory sharing, you still want to tell your citizen that under those circumstances they do not have a right for that hearing?

I do not believe that is the position which any of us would want to take, not the position that the U.S. Senate could choose to establish as the policy of the United States of America.

I believe that, should we do so, that whatever minimal benefit might be gained through the expedition of the licensing process will have been more than compromised by the loss of public confidence in their regulatory agencies and in the fundamental commitment to public safety of this Nation's nuclear regulatory policy.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, on the issue at hand, I support the Johnston-Wallop approach. I believe it is time that we do what we must to put nuclear energy on an equal footing with reference to its good points and its bad points. I do not think that is the current law. I think it is significantly penalized.

So I am hopeful that we will arrive at a position where one of our real strong economic points is the economic availability of electricity and surely we ought to make nuclear power part of that arsenal for America's strength and prosperity in the future.

Mr. President, continued economic growth, more jobs, and a higher standard of living for our people all depend on the availability of electricity. America is becoming increasingly electrified. Today, 36 percent of our primary energy is consumed by electricity generation. By the year 2010, the Department of Energy has projected it to be 41 percent.

A national energy strategy must address the issue of our future demand for electricity. The Nation must have options to meet growing demands for electricity in a safe, efficient, and environmentally sound manner.

DOE tells us that electricity demand will grow by between 1.6 to 2.4 percent per year through 2010. In order to sustain our economic growth, electric utilities must be able to continue to provide reliable and competitively priced electricity. If the projected growth holds true, the Nation will need from 190 gigawatts to more than 275 gigawatts of new generation—that's about 20 1,000 MW powerplants which must come on-line each year between the years 2000-2010. Furthermore, approximately 85 percent of that growth demand would be base-load capacity—the type of generation facility that is needed to operate continuously around the clock. The current primary sources for baseload capacity are coal and nuclear.

If coal continues to be constrained by environmental considerations and it's doubtful that conservation can meet this growth demand, then we must maintain our nuclear option.

Currently nuclear energy generates about 20 percent of the electricity in the United States. In this legislation we are not mandating that nuclear energy be used exclusively to meet all the new demand. However, unless we reform the nuclear licensing process, we would lose this viable option.

The current process simply does not work. A provision of this bill assures we have this option. The provision to which this Senator refers involves the restructuring of the system we use to license nuclear reactors. It appears as title IX, the Nuclear Reactor Licensing Act of 1991.

While the Johnston-Wallop substitute takes up fewer than 6 pages in this 401 page bill, it holds great significance for America's competitive position in the world economy. Title IX will assist America in its efforts to become more competitive with the Japanese, with the Europeans, and with all industrial nations.

And title IX holds great significance for American consumers, who have every reason to expect reasonable electric rates.

Let me cite what I consider to be the compelling facts for adoption of title IX.

When the Japanese or the French, as examples, consider the construction of a new nuclear power plant, they will do something quite interesting. They will draw up designs using technology that has been developed here in the United States of America. Then after all the safety checks, they will construct the plant, and that Japanese or French reactor will be producing electricity approximately 4 years after construction begins. That is 4 years to build the entire plant and bring it on line.

When I had the opportunity to visit Japan a couple of years ago, the Japanese often bragged to me of their achievements of this 4-year construction-to-operation period. They deserve that pride.

Assuming there were any new nuclear plants planned in our great Nation, how long would it take an American utility to do exactly what the Japanese or the French accomplish in 4 years? What would my colleagues guess? Six years on the average? Maybe 10 years?

The answer, based on our most recent experience, is 14 years—more than three times what it takes in Japan or France.

What is the economic impact of that 10-year differential? That is 10 years when a huge capital investment is tied up, not returning one penny to cover annual interest and various sunk costs. That is 10 years of waste and frustration. In fact, the U.S. experience has been that time-related costs account for as much as 50 percent of a nuclear plant's total costs.

And please remember, the Japanese and others are building these plants using American technology. In fact, the only sales for America's nuclear generating industry today are sales for export.

How have the Japanese and the French achieved this shorter period? Mr. President, they have achieved this as a result of two things we fail to do.

They have standardized their reactor designs. A nuclear plant built in the north of France or Japan will look, inside and out, exactly like one in the southern part of the country, hundreds of miles away. The control rooms will look the same. Each will have various controls at the exact same location, plant to plant. The reactors will be identical. The cooling systems will be the same.

It is a cookie-cutter construction, and it works.

Because manufacturers must apply to the Nuclear Regulatory Commission for design certification, title IX can work effectively only when manufacturers follow the concept of standardization. If title IX becomes the law of the land—as this Senator believes it should—standardization will become a reality and make the licensing process more rational.

The other thing the Japanese and the French have accomplished is also very basic, very simple, and very wise.

They have front-loaded all controversies over a plant's safety and environmental impact.

Instead of having the safety issue resolved—as we do—after a plant has been constructed, the French and the Japanese resolve safety issues before construction. That means that billions of dollars of investment do not stand idle—costing the ratepayers and investors millions of dollars in monthly in-

terest—pending the outcome of litigation over safety that can persist for years.

And I might point out that the Germans, the Canadians, and other leading industrialized nations are doing precisely what the French and the Japanese are doing. Only the United States is holding out.

That needs to change.

Title IX of S. 2166, the Nuclear Reactor Licensing Act of 1991, would shorten the time it takes from construction to operation in a sensible and responsible way—without in any way short-circuiting safety or environmental safeguards.

Let me restate that. Title IX in no way short-circuits or ignores safety or environmental safeguards. It would simply involve the public earlier in a plant's consideration, thus giving greater assurance to the utility, and its customers, that once the plant is approved that it can be operated for the public good—not tied up in court.

Title IX will do what the Japanese and the French and others already do. Title IX requires that the important safety issues be resolved before construction of the reactor, not afterwards as under current law.

In seeking to place the absurdities of our current law in some perspective, it is as if we told a family planning to build a new home that they must get a building permit, construct the house, and pay for it, but then they cannot move in until their neighbors pass judgment. If the neighbors say no, then no occupancy permit is issued.

How many homes would ever be built if that were America's law? Yet that is precisely how our current nuclear energy law works. We begin construction before the decision on safety is made. We need to reverse that.

In making such a reversal, would we compromise safety? I don't see how. There is not one iota of evidence that the Japanese or the French have operated a nuclear energy program with less concern than we have. In fact, their programs appear even safer, at least by some yardsticks. They have higher capacity-use rates, which in part stem from fewer periods of unplanned shutdowns.

The Japanese, for example, have an average capacity-use rate of 71 percent, while ours stands at 67.5 percent. And while we have been able to reduce America's unplanned shutdowns per plant, per year, to fewer than two—down dramatically from seven as recently as 1980—the French and the Japanese have averages between 1 and 1.5 percent.

The current U.S. law was written in the 1950's, when we were entering the nuclear power era, when each plant was unique. That law said: Get a construction license from what is now the Nuclear Regulatory Commission, then go out and design your plant. After you have built the plant, then come back to the Federal Government so it can determine if your design is a safe and practical one—subject to delays in court—while the plant sits idle.

That may have been a practical approach for an industry in its adolescence. But it clearly is out of date for a mature industry—as our worldwide competitors have demonstrated.

There are 75 nuclear power plants in the planning or construction phase throughout the world. Not a single one of them is in the United States.

America today operates 111 nuclear power plants, plants producing about 20 percent of our electricity. Yet not a single nuclear plant order has been placed since the Three Mile Island accident occurred 12 years ago. About 70 plants that were ordered in the 6 years prior to 1979 were canceled.

By contrast, the French in less than two decades have raised their nuclear generation from 10 percent of their electrical production to 75 percent of that production. Their 56 operating reactors will soon be joined by 7 plants under construction.

No people on this Earth are more concerned over the safety of nuclear power than the citizens of Japan. Yet the Japanese recognize the importance of providing safe and dependable electrical power. Properly monitored, nuclear reactors provide just that.

Twenty-six percent of Japan's electric power now comes from nuclear reactors—and the Japanese plan to double their nuclear capacity over the next two decades, bringing 40 new nuclear plants on line—using a legal regime quite like title IX.

The Japanese trust a strategy where safety issues are resolved first. Why can't we?

The key to title IX is this: It frontloads America's squabbles over nuclear safety, so that the fights—even if they stretch over the years—will occur before billions of dollars are sunk into a completed, yet idle, plant.

Actually, the issue has never been the overall length of the process to design and construct a nuclear plant. That is likely to remain 10 to 20 years, as is the case today in Japan.

The issue is at what point should $1 billion or $2 billion be invested on hardware and cement to create a new plant.

Is that to occur before or after the safety review? The Japanese and the French—as well as other nations—do that review prior to investment, not afterward. Why shouldn't we?

The Japanese system involves four careful stages:

First, there is the selection of the site and the environmental survey. That may last several years.

Then there is the siting plan decision by the Prime Minister, requiring the consent of 12 ministries.

Next comes the safety examination, which produces both an establishment permit and a construction permit. I should point out that the establishment permit goes into essentially the same level of detail we require after the fact. This covers a detailed site study, earthquake studies, the safety design of the plant, waste treatment plans, and accident analysis. The Japanese simply do it prior to the investment.

Finally, there is the actual construction of the project.

Typically, the entire process in Japan requires a dozen years—but little money need be invested until the final construction phase, which follows the resolution of all safety and environmental issues. During that final stage, the Ministry of International Trade and Industry conducts periodic inspections.

How does our system work? It is so easy to find outrageous examples of waste under current U.S. law. The Shoreham nuclear power plant was built by the Long Island Lighting Co., at a total cost over time of $5.5 billion. That plant has produced 36 hours of online power during low-power testing. So what has happened? Long Island Lighting Co., after years of litigation, sold the plant to the State of New York for a single dollar—and the State will now dismantle Shoreham for about $150 million, all of which will be paid for by the ratepayers. How ridiculously wasteful.

If we had passed title IX years ago, Shoreham might never have been built, assuming strenuous opposition in the State, and the American economy would today be $5.7 billion richer.

In this debate over title IX, we may hear that safety will be shunted aside. Frankly, I do not see how that argument carries any weight.

First there would be the design certification process, involving a formal hearing. This process is appealable to the courts.

Then there is the site permit, where the issue of emergency planning would be discussed, in an adjudicatory hearing, also appealable to the courts.

Next comes the combined construction and operating license, again with an adjudicatory hearing appealable to the courts.

And finally, after construction is completed, intervenors of the project may still request a hearing and, if not satisfied, they can go to court to argue over a range of issues. Did the construction process fulfill the approved design? If the plant meets the design according to its license agreement the plant can be operated. If it has not met the design—delay and a new investigation will be necessary—and fully justified.

Moreover, the new licensing process allows full public review of new safety issues. What title IX would try to prevent is the rehashing of the same old safety and environmental issues dis-

cussed and resolved prior to construction.

That doesn't sound to me as if the public is being shortchanged. And we know that the NRC will be looking over a utility's shoulder throughout the process of construction.

This Nation's Governors are not given to reckless support for nuclear energy. So this Senator is impressed that the National Governors Association's current statement on nuclear energy policy, revised last February, says this:

Licensing procedures that provide for full public participation and encourage a careful review of all health, safety, and environmental concerns must be developed. Any reconsideration of these decisions must be limited to significant new issues that indicate the facility or site would not comply with the original requirements or to new information that indicates that the health and safety of the public would be endangered. Reconsideration must be handled in an open and expeditious manner.

I agree.

American prosperity—our paychecks and our future—will be determined to a very great extent by energy use and energy costs. America uses the most energy in the world not because there are so many of us living in America—other nations are more populous—but because our economy is large and robust.

We will continue to be a major user and producer of energy—while at the same time striving to improve on our past successes for conserving energy and the efficient use of energy.

But we must look for wise uses of various types of energy, not locking some uses out. Those who oppose the very idea of nuclear energy will oppose title IX. They will oppose title IX because everyone knows that no new nuclear plants could ever be built in this Nation under the uncertainties of the current policy.

But nuclear power, this Senator believes, is a reasonable solution to many of our energy needs. Nuclear power necessarily achieves two goals that are critical at this time in world history:

Nuclear energy reduces any Nation's need for oil imports. I do not need to tell my colleagues how important that is. Sometime it is argued that we don't need to worry because only 5 percent of our electricity comes from oil. But the percentage was far higher in 1973 before the oil embargo, and it could easily slide again toward those higher levels. It was that 1973 embargo that demonstrated to the French and the Japanese the importance of emphasizing nuclear power.

And the use of nuclear energy means less emission of greenhouse gases, which may be producing global warming, as well as other conventional pollutants, such as those producing acid rain and smog. Nuclear reactors simply do not produce these gases.

I should also point out that title IX is not a new idea. It codifies reforms that the NRC adopted in 1989, the so-called part 52 rule. In addition, it removes any doubts over the appealability of the NRC's authority for a start-up on operation of a plant. Yet it prevents the hearing from delaying NRC's go-ahead on plant operations, if the NRC determines that the plant has met all the requirements demanded in its license and is safe to operate.

In fact, this idea of combining today's two-step process into a single license was broached as long ago as 1954, when the Supreme Court Justice William O. Douglas argued that safety issues should not be put off until after construction. President Carter's Three Mile Island Commission also recommended combining the licenses, resolving all safety issues before construction began.

NRC Chairman Ivan Selin recently testified in the House of Representatives that "any intelligent and interested citizen has got to be suspicious about a regulatory program that doesn't answer serious objects until it's almost too late to do anything practical about them."

Every Member of this body understands that America is in a critical competition for world markets, for economic progress. It is a competition America can surely win—but only if we play our cards right.

Those cards involve many things. They involve the need for a well-trained work force. They involve the need for policies that encourage economic growth and greater industrial efficiencies. And they involve how we regulate ourselves.

If we are going to lock ourselves out of the nuclear option by leaving in place the failed regulatory schemes of the past, then we will have imposed just one more costly disadvantage in our competition for world markets.

If one of our nuclear plants cost $6 billion and produces no more electricity than a Japanese plant put on line for $1 billion, we have added a $5-billion millstone on the back of American industries and American consumers. That simply is unfair and surely counterproductive.

In closing, Mr. President, the Harrisburg, PA, Patriot newspaper not so long ago made a good point in an editorial: "This country doesn't have the luxury to invest years of time and billions of dollars in a powerplant that will never be used."

That editorial, supporting the concepts in title IX, holds particular importance when we recall that Harrisburg is just a few miles upstream from Three Mile Island.

Mr. President, I urge that the Senate support the Johnston-Wallop substitute to title IX. American needs it now.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from the New York Times of February 27, 1990, entitled "Japan Now Ahead in Nuclear Power, Too" and a U.S. Council for Energy Awareness info letter dated October 1991.

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

[From the New York Times, Feb. 27, 1990]

JAPAN NOW AHEAD IN NUCLEAR POWER, TOO

(By Matthew L. Wald)

WASHINGTON, February 22.—Japan is rapidly outpacing the United States in the field of nuclear power, American experts in Government academia and the utility industry say.

Japan's advantages are widening in research and development, in construction techniques and in safe operation of the plants, according to a team of seven experts who recently returned from a National Science Foundation trip to Japan.

Even in the areas of nuclear-plant design, where American companies are making progress, the improvements will first make their way from blueprint to steel and concrete in plants built in Japan.

Several of the experts compared the loss of American leadership in nuclear power—a technology invented and first commercialized in the United States—to the fate of the American computer and auto industries, which are threatened by Japanese inventions and manufacturing advances.

Members of the team returning from Japan noted at a conference here this week the long hiatus in orders for nuclear plants in this country and said the American losses were becoming harder to reverse.

"The infrastructure required to build nuclear plants in the United States is slowly dwindling," said Kent F. Hansen, a professor of nuclear engineering at the Massachusetts Institute of Technology and the chairman of the group. "Without more projects, our ability to build them as cheaply as others will suffer."

The last order for a nuclear power plant in the United States was in 1978, and since then utilities in this country have canceled about 65. In the same period, Japan has broken ground for 23 reactors. Japan has 37 operating, compared with 111 in this country. It has 12 plants under construction; this country has 5, all mostly completed.

Kevin D. Burke, an international relations specialist at the Nuclear Regulatory Commission, said in a telephone interview that a late start gives Japan a natural advantage. "They've been able to look at the other nuclear programs in the world and, in many ways, improve on them, learning from the operating experience of the French program, the German program and the American program," he said. "It's unfair to say in black and white that their program is better; it should be better."

REVIVAL SOUGHT IN U.S.

Supporters of nuclear power hope American orders will revive in the middle of this decade, spurred by new designs and changes in the system for building and licensing plants. Two American manufacturers, the Westinghouse Electric Corporation and the General Electric Company, are designing advanced plants in work supported by the Government, and applying to the Nuclear Regulatory Commission for generic approval. The idea is that utilities could win quick permission for a new plant by picking one of the approved designs rather than custom-designing, as has been the case in the past.

Still, the first copies of both companies' new plants are likely to be built in Japan, the experts said.

Building those models here successfully would require learning from the experience of the Japanese, said Loring Mills, a nuclear specialist of the Edison Electric Institute, the utility trade association. "If we don't find a way to build new plants in the next four or five years like they do, we're not going to build them," he predicted.

MORE IMPORTANT IN JAPAN

But experts at the conference here were quick to point out that nuclear power is far more important for Japan, which has virtually no indigenous energy resources and a strong desire for energy independence, than for the United States, which can burn native coal for most of its electricity and is content to import oil and natural gas for much of the remainder.

Experts made these points about the deterioration of the United States leadership in nuclear power:

Construction of a nuclear plant averages 5 years in Japan, compared with 11 in this country. Because designs are better developed before construction in Japan, a Japanese plant requires only half as many hours of work by skilled craftsmen as does an American one of the same size. And Japanese builders guarantee the prices, eliminating ballooning costs on the way to completion.

Operation is smoother in Japan, with unplanned shutdowns coming only one-tenth as often as in American plants, on average. Japanese plants ran at 72.3 percent of capacity last year, compared with 63.3 percent in this country. The level of radioactivity in the cooling water in Japanese nuclear plants is 500 times smaller than in American plants, and the radiation dose to plant workers is 10 to 15 times smaller.

Research and development has produced more advances in many areas in Japan. Among them: computers in some control rooms that respond to the spoken commands of operators and run a growing range of systems automatically. Researchers are making progress toward a new nuclear fuel that will last substantially longer than the current nine months, which would allow a longer interval between refueling shutdowns. And researchers are beginning work on a "self healing" plant that will diagnose its own problems and send robots to fix them.

ATTENTION TO DETAIL

The team spent a week in Japan last month, visiting 17 agencies, institutions and companies. The visit was part of a series organized by the National Science Foundation's Japanese Technology Evaluation Center, based at Loyola College in Baltimore, to evaluate Japanese progress in such fields as biotechnology, telecommunications and superconductivity.

As with assessments in other areas, the nuclear team found that the United States retains a lead in some areas. For example, the Japanese rely heavily on computer codes developed in this country to simulate various reactor conditions, and the American lead in the field is growing.

But the team found that patience and attention to detail were propelling Japan toward leadership in still another field. From a distance, Japanese reactors are similar to American ones, on which they are based, said Donald R. Olander, a professor of nuclear engineering at the University of California at Berkeley. "They are very similar, much as a Nissan pickup truck is similar to a Ford Ranger," he said. "But there are small differences which make an enormous difference." These, he said, are reflected in higher reliability.

NEW DEVELOPMENTS A FACTOR

In building their own industry, the Japanese have taken advantage of numerous technological developments not available when most American plants were planned, the panel said. These include computer-assisted design, advanced computers for controlling plant processes, fiber-optic communications channels, increased fabrication of large parts in shops instead of in the field, and new construction materials.

Some innovations are not Japanese, but have been perfected in Japan, said Dr. Hansen of M.I.T "The heaviest-lifting crane is a U.S. design," he said. "They have several of them there and know more about how to use them than we do."

In addition, Dr. Hansen said, the Japanese construction industry spends $800 million a year, about 0.54 percent of sales, on research and development of new techniques, some of which can be applied to nuclear plants. By contrast, the United States industry invests $50 million, or 0.04 percent of sales.

Japan also outspends the United States on research and development for advanced reactors, by $775 million a year to $187.5 million, and on research for the current generation of reactors, by $291 million to $180 million. Both figures exclude proprietary research by companies.

MORE SCHOLARLY PAPERS

The nuclear programs of Japanese universities are well supported, the panelists said, and Japanese scientists in academia, industry and the national laboratories publish nearly twice as many scholarly papers on nuclear material as Americans do.

Some research is in areas this country has rejected. The Japanese industry has pursued a reactor for ship propulsion, even though it does not think such a rector will be commercially attractive any time soon, the experts said. In addition, the industry is pursuing plans to recover and re-use the plutonium fuel created in the operation of existing reactors, a step rejected in this country because it could lead to the spread of nuclear weapons. Japan is also building a "breeder" reactor, which makes nuclear fuel faster than it uses it up.

While the United States is unlikely to move to a breeder system, with extensive supplies of uranium available cheaply, this country would benefit from a more long-term, safety-oriented approach to the technology, the experts said. But one of the panelists, Victor H. Ransom, a scientific and engineering fellow at the Idaho National Engineering Laboratory, said that while the United States nuclear industry would benefit from adopting the Japanese drive toward quality and reliability, the drive arose not from technology but culture. Regulation is less contentious in Japan, he said, because the Ministry of International Trade and Industry trusts "that the utilities will actually do the right thing."

"The same system probably would not work here," he said. "There are enough organizations that have stayed within the law but have done everything on the basis of economics," scrimping on expenditures that would mean long-term savings.

[From the Council for Energy Awareness, October 1991]

GROUNDBREAKING JAPANESE-STYLE MARKS CONSTRUCTION START FOR TWO GE NUCLEAR POWER PLANTS USING ADVANCED DESIGN

A Japanese-style ground breaking ceremony was held in mid-September to mark the start of construction of two General Electric nuclear power plants employing an advanced "evolutionary" design. The two plants are units 6 and 7 at Tokyo Electric Power Co.'s (TEPCO) Kashiwazaki-Kariwa station 140 miles northwest of Tokyo. When they go on line in 1996 and 1997, they will be the first in the world to operate with 1,356-megawatt Advanced Boiling Water Reactors (ABWR). GE is also seeking certification of the ABWR design in the United States under the Nuclear Regulatory Commission's new licensing procedures.

With officials from TEPCO, its union and construction companies looking on, ceremonial saki was poured on 1½-foot seedlings marking the spot near the Sea of Japan where the ABWRs will be built. The ceremony, a time-honored religious custom in Japan, was held to invoke heavenly protection for the site. After the saki was poured, bulldozers plowed the ground, signaling the official start of construction.

The ABWRs, which join five existing GE reactors of an earlier design currently operating at the site, should be safer and more efficient and have lower operating costs, GE says. The planned five-year construction period compares with an average of more than 11 years for recently completed nuclear plants in the United States.

Commenting on the groundbreaking, Dr. Bertram Wolfe, GE's vice president for nuclear energy, said it marked "the dawn of a new era" for the commercial nuclear energy industry.

"The ABWR has been under development for about 10 years," said Dan Wilkins, general manager of GE's nuclear services and projects department. The design incorporates the best features from boiling water reactors in the United States, Japan and Europe, and its takes advantage of decade's worth of technological advances in nuclear engineering and digital electronics, he said. In all, GE and its Japanese partners conducted more than 20 major test programs to prove the design concept.

"Relative to current plants we think it offers major advances in safety, reliability and economics," Wilkins said.

Wilkins said the groundbreaking "clearly shows that in Japan, where there is a stable, predictable regulatory process and where plants can be built in four or five years, that nuclear power is the technology of choice." In designing the ABWR, Wilkins said GE achieved its goal of a 15 to 20 percent improvement in overnight capital costs, relative to previous BWR designs. In addition, operating and maintenance costs will be significantly lower.

GE intends to offer the ABWR to the Taiwan Power Co., which could receive government approval this year for its fourth nuclear plant, Wilkins said.

Studies by the U.S. nuclear energy industry and the Bush administration (for its proposed National Energy Strategy) show that new advanced nuclear plant designs like the ABWR will provide competitive electricity in the United States for decades to come, if standardized designs are used and—as in Japan—they are built in a reasonable length of time.

GE's share of the two-unit project is valued at more than $1.4 billion, which the company notes is a plus for the U.S.-Japan trade deficit. GE will supply the advanced reactors, nuclear fuel and turbine generator. The work will be performed in San Jose, CA; Cleveland, OH; Wilmington, NC; and Schenectady, NY.

Hitachi Ltd. and Toshiba Corp., GE's Japanese partners in the joint venture, are re-

sponsible for the balance of plant and for overseeing civil construction work.

When both ABWRs are operating, nuclear power will account for about 30 percent of TEPCO's generating capacity. Nationally, Japan's goal is to generate more than 40 percent of its electric power from nuclear energy by the year 2010.

In a related development, GE noted that 21 boiling water reactors in the United States and overseas achieved capacity factors of 75 percent or more in 1990. Northern States Power Co.'s Monticello nuclear plant had the highest rating—98.7 percent. Capacity factor measures the percentage of a power plant's maximum electrical output that is actually produced during a given period.

Mr. DURENBERGER. Mr. President, today we are discussing the provisions by which future nuclear power plants will be licensed, and I support the efforts of my colleague from Florida, Senator GRAHAM. However, Mr. President, there is a much more important issue facing the nuclear industry and that is the question of spent nuclear fuel disposal.

Mr. President, the Federal Government must begin to live up to its responsibility outlined in the 1982 and 1987 Nuclear Waste Policy Acts. These acts provide a complete program and detailed schedule describing the characterizing of a site in Nevada—Yucca Mountain—and, if suitable, the construction of a permanent high-level waste repository. This legislation originally called for a 1988 deadline—the time that the Federal repository was to start receiving spent fuel for disposal. Unfortunately, the Department of Energy has asked for an extension and it is unlikely that a Federal repository will be ready before 2010. Indeed, in fiscal year 1992, the Yucca Mountain site characterization program faces a $30 million budget cut which could potentially delay the characterization program further. Mr. President, these schedules and delays are aggravating an already critical need for interim high-level waste storage, and the time for Federal action has come.

Mr. President, all U.S. nuclear utilities will ultimately run out of temporary storage capacity for their spent nuclear fuel. For instance, my own Minnesota based utility, Northern States Power Co., faces that problem right now. For the past year, NSP has been attempting to win public approval for the temporary storage of waste in NRC-approved, above ground dry casks storage tanks. A major part of the debate surrounding the permitting of this site has centered on the ability of the DOE to site a Federal repository. The uncertainly of the DOE's process threatens the future viability of the NSP plant and indeed the future of the nuclear power industry across the country.

Further, Mr. President, my constituents have paid in excess of $180 million to the nuclear waste fund, the fund established to finance construction of the Federal waste facility. Mr. President, we owe our constituents the assurance that the Federal commercial waste repository program will stay on track and that they will not be forced into paying additional money into a program that is indefinitely stalled.

Mr. President, the amendment before us today deals specifically with the provisions by which future nuclear power plants will be licensed. It is not reasonable to expect, however, that any nuclear power plants will be sited, or that any bank will finance the construction costs of a plant, without the development of a high-level, permanent commercial waste repository.

Mr. President, this discussion is yet another example of putting the cart before the horse. Short of a resolving the question of siting a permanent waste repository, the future of my utility, as well as those of many of our colleagues, is threatened. It is my hope that very soon the Senate will consider this important issue.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

AMENDMENT NO. 1576 TO AMENDMENT NO. 1575

(Purpose: To amend the Atomic Energy Act of 1954, as amended, to improve the nuclear power plant siting and licensing process, and for other purposes)

Mr. GRAHAM. Mr. President, at this time, I will send to the desk the second-degree amendment.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Florida [Mr. GRAHAM], for himself, Mr. FOWLER, Mr. KENNEDY, Mr. BRYAN, Mr. REID, and Mr. HARKIN, proposes an amendment numbered 1576 to amendment No. 1575.

Mr. GRAHAM. 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 1 of the Johnston amendment strike from line 2 through the end on page 6 and insert in lieu thereof the following:

SEC. 9000. SHORT TITLE.

This title may be cited as the "Civilian Nuclear Reactor Licensing Act of 1992."

SEC. 9101. CONSTRUCTION PERMIT AND OPERATING LICENSES.

(a) All applicants for licenses to construct or modify production or utilization facilities shall be initially granted a construction permit after the Commission has provided an opportunity for public hearing on the record pursuant to section 189 of this Act and if the application is otherwise acceptable to the Commission. Upon the completion of the construction or modification of the facility, upon the filing of any additional information needed to bring the original application up to date, after providing an opportunity for public hearing on the record pursuant to section 189 of this Act, and upon finding that the facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this Act and of the regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of an operating license would not be in accordance with the provisions of this Act, the Commission shall thereupon issue an operating license for the applicant. For all other purposes of this Act, a construction permit is a "license."

(b) Notwithstanding any other provision of this section, the Commission shall issue to the applicant a combined construction permit and operating license for a thermal neutron power generation facility after providing an opportunity for public hearing on the record pursuant to section 189 of this Act, if the application contains sufficient information to support the issuance of a combined construction permit and an operating license in accordance with the regulations of the Commission and the Commission determines that there is a reasonable assurance that the facility will be constructed and will operate in conformity with the application, the provisions of this Act, and the rules and regulations of the Commission. The Commission shall identify within such combined construction permit and operating license the inspections, tests, and analyses which shall be performed by the licensee and the acceptance criteria therefor which will provide reasonable assurance that the plant has been constructed and will operate in accordance with the license. After issuance of a combined construction permit and operating license for a thermal neutron power generation facility, the Commission shall assure through inspections, tests and analyses that construction is completed in conformity with the combined construction permit and operating license, consistent with the regulations of the Commission. Prior to the commencement of operation of any facility licensed under this subsection, the Commission shall publish in the Federal Register a notice of the intended operation of such facility, and shall provide a sixty-day period during which any person may file a written objection to the commencement of operation on the basis that the facility authorized has not been constructed or will not operate in conformity with the license. Such objection shall set forth in reasonable detail the facts and arguments upon which the objection is based, and may be accompanied by a request for a hearing on the record under section 189.

If a hearing is requested, the Commission shall determine whether good cause exists therefor and, if so, the issues to be heard and whether the hearing must precede commencement of operation of the facility in order to provide reasonable assurance of the protection of the public health and safety and common defense and security. The Commission shall designate an issue for a hearing if the issue consists of a substantial dispute of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except at a hearing and:

(i) the issue was not and could not have been raised and resolved in any proceeding for the issuance, modification or amendment of a license, permit, or approval for that facility, its site, or design; or

(ii) a showing has been made that (I) there has been nonconformance with the license; (II) such nonconformance has not been corrected; and (III) such nonconformance could materially and adversely affect the safe operation of the facility.

Following completion of any hearing held, the Commission shall decide whether the license to construct and operate should be modified. Prior to the commencement of operation, the Commission shall determine, based upon the requisite program of inspec-

tions, tests, and analyses, whether construction has been completed in conformance with the combined construction permit and operating license, and consistent with the regulations of the Commission.

TITLE II—MISCELLANEOUS PROVISIONS

DEFINITION

SEC. 9201. Section 11 of the Atomic Energy Act of 1954, as amended, is amended by adding new subsection dd. as follows:

(dd) "Thermal neutron power generation facility" means a utilization facility which is designed to produce electrical energy and in which core power is designed to be produced predominantly by thermal neutron fission.

TITLE III—CONFORMING AMENDMENTS

ANTITRUST PROVISIONS

SEC. 9301. Subsection 105(c) of the Atomic Energy Act of 1954, as amended, is amended in the first sentence of paragraph (2) by inserting "and/" after the word "construct."

LICENSE APPLICATIONS

SEC. 9303. Subsection 182 b. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

(b) The Advisory Committee on Reactor Safeguards shall review each application under section 103 or section 104(b) for a construction permit and/or an operating license for a facility; any application under section 104(c) for a construction permit and/or operating license for a testing facility; any application under section 104(a) or (c) specifically referred to it by the Commission; any proposed authorization to commence operation under sec. 185 b.; and any application for an amendment to a construction permit or to an operating license under section 103 or 104 (a), (b), or (c) and shall submit a report thereon which shall be made a part of the record of the application and available to the public except to the extent that security classification prevents disclosure.

REVOCATION

SEC. 9304. Section 186 a. of the Atomic Energy Act of 1954, as amended, is amended by inserting the words "or section 185" after the words "section 182.".

TITLE IV—EFFECTIVE DATE

SEC. 9401. All sections of this Act shall take effect as of the date of enactment, and shall apply to all proceedings involving a combined license for which an application was filed after May 8, 1991.

SEC. 9402. The Nuclear Regulatory Commission shall propose regulations implementing this Act within one year of the date of enactment of this Act.

The PRESIDING OFFICER. Is there further debate?

Mr. GRAHAM. Mr. President, there are others who wish to speak on the second-degree amendment who are not here at this time. I would ask for the institution of a quorum call, or if the managers would like to move to another item, I would be supportive of that.

Mr. JOHNSTON. Mr. President, let us understand what a hearing means, what an adjudicatory hearing means. It is probably one of the most misunderstood words in the lexicon of American law.

We have a whole track record with respect to operating licenses in the law prior to 1989. And the average between 1982 and 1989 for months on the docket was 49 months. Some plants took as long as 108 for Comanche Peak; 103 for Diablo Canyon; 16 for Limerick; 96 for Seabrook; 125 for Shoreham; 96 for South Texas.

Mr. President, we are dealing in effect with a proceeding which takes 4 years, involves a formal and technical trial by the lawyers with examination, cross-examination—indeed, Mr. President, we have made a picture here of the documents which were introduced in the Catawba hearing process. I hope my colleagues can see this. This is not a question of renting the school gymnasium and having your friends and neighbors come in and, you know, make a nice statement about whether they want the plant or not.

Mr. President, this is the most technical, the most involved, the most expensive, the most lawyer-like proceeding known to man, as this set of documents, which is not atypical, would indicate.

Now, the question here, Mr. President, is whether, under part 52—that is the present Nuclear Regulatory Commission rules—and indeed, whether under our legislation, when you have already jumped through three hoops: The first, you have attained an early site permit, which involves the staff review of 12 months and a hearing of 22 months—these are projected NRC estimates of what these hearings would take—and you receive your early site permit; it is in hand.

Then you go with the design certification, which takes 30 months of staff review and another 18 months of hearings—48 months—and you secure that.

And you have gone through all of that, you have gone through all of this with respect to both your site and your design certification, and then you come back a third time, Mr. President, and have a staff review of 16 months, a hearing of 22 months, and you get your license. And then you go to construction.

The question is now, under the Graham amendment, whether or not you have a right to go through the whole thing all over again. Now, the Nuclear Regulatory Commission—and, Mr. President, I submit this Commission is not worthy of the criticism they have received here today. There is no basis for that criticism. There is no basis for an attack upon their integrity; no basis for an attack upon their competence. You can disagree with the fact that they support our amendment and do not support the amendment of the Senator from Florida. But there is just simply no basis for that attack, Mr. President.

And I do not say enough for this administration, but I think when you get people who are trying to do a job, both this Commission and the previous one, I think we ought to attack them, if they deserve attack, on the basis of issues and not on the basis of integrity. Because in my view, the members of that Commission are of the highest integrity, and I think of the highest competence.

I do, in fact, at this point ask unanimous consent to have printed in the RECORD a letter dated February 5, in which the whole Commission, with the exception of Commissioner Remick, who is away on official travel, criticizes the Graham amendment and supports the Johnston-Wallop-Bumpers-Wirth-Breaux-Simpson, et cetera, amendment.

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

NUCLEAR REGULATORY COMMISSION,
Washington, DC, February 5, 1992.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In response to requests, the Nuclear Regulatory Commission (NRC) would like to take this opportunity both to express our support for the nuclear licensing reform provisions of S. 2166, as introduced, the "National Energy Security Act of 1992," and our opposition to an amendment to S. 2166 which we understand might be proposed by Senators Graham and Fowler. Of course, we realize that this is a very fluid situation and our views must be conditioned by the information which we have received up to this time. Commissioner Remick is away on official travel and did not participate in the review of these comments.

We have repeatedly stated that NRC supports licensing reform legislation which would grant additional flexibility and confirm our existing authority regarding the timing and format of post-construction hearings. S. 2166, like its predecessor, S. 1220, is such legislation. S. 2166 would also add stability to the licensing process by codifying major provisions of Part 52 and thereby mooting ongoing federal court litigation challenging critical portions of Part 52 which has the potential to continue for some years into the future.

As indicated above, we have reviewed the alternate approach which we understand is being considered by Senator Graham. The NRC cannot support this approach, for three reasons. The first is that this amendment would specifically provide for on-the-record hearings for all power reactor applications, including post-construction hearings on combined licenses. The commission does not read the current Atomic Energy Act as mandating use of formal adjudicatory procedures on such applications. The Commission has indicated in the past that it would oppose legislation, such as this amendment, which would reduce its procedural flexibility. Secondly, the amendment would essentially provide for a post-construction hearing prior to operation if the petitioner presents significant new information that could not have been raised prior to issuance of the combined license. This approach is the same as that taken by the D.C. Circuit in its recently reargued Part 52 opinion, and was opposed by the Commission. The Commission believes that Part 52 provides adequate means to address significant new information that arises during the licensing process. Finally, the proposed amendment would permit combined licenses to be issued only for thermal neutron power generation facilities. The Commission disagrees with the limitations of this approach, as it believes that combined

licenses can also be issued for nonthermal neutron utilization facilities such as certain of the advanced reactors.

Sincerely,

IVAN SELIN.

Mr. JOHNSTON. Mr. President, the issue really is, What do you have to do after all of this when you come to the end of construction? What do you have to do to shut that plant down? Because, you see, after he has invested his multibillions of dollars here, if you can shut him down—or shut her down, I guess; him or her, whichever way you call the plant—if you can shut it down, then you can actually prevent it from being built. Because who wants to invest in a plant that you do not know whether you can use for another 49 months, 49 months being the average amount of time that is taken for one of these licenses under the two-step process to be litigated.

Well, the answer is nobody. And that is the reason you do not have a new plant started since 1978. And you will not have one until it is straightened out. That is a theme that is repeated over and over again. You have to have predictability. You have to have protection for the public, to be sure.

Now, what the Graham amendment does is say you are entitled to shut this thing down if they can present us a substantial dispute of fact about some new issue.

Now, Mr. President, that does not mean that there is a likelihood that they will win. That does not mean that the NRC is of the opinion that it is unsafe for the plant to go forward. That does not mean any of those things. It means, Can you present a substantial dispute of fact?

Mr. GRAHAM. Will the Senator yield?

Mr. JOHNSTON. Yes, for a question.

Mr. GRAHAM. Mr. President, the language which the Nuclear Regulatory Commission itself wrote and urged upon this Congress states that it is not just any substantial fact which justifies a hearing, but a substantial fact which is either, first, one that was not and could not have been raised and resolved at any proceeding for the issuance, modification, or amendment of a license, permit, or approval for the facility, its site, or design.

So, that is an issue that could not have been raised previously.

Or, second, it must be that a showing has been made that there has been nonconformity with the license; that such nonconformance has not been corrected, and that such nonconformance could materially and adversely affect the safe operation of a facility.

Mr. JOHNSTON. There is an "or" on that, and that was testimony that was presented prior to part 52 and was against the backdrop of the previous regulations.

In the previous regulations, the operating permit was being sought during construction so that, in most instances, the request for the operating permit did not stop the plant after it was completed. It did, in some three instances—some would argue maybe five or six. But for the most part those kinds of hearings were during construction and did not stop the process.

Under this amendment we would be taking a step backward, even from the regulations prior to part 52. I mean, if you want to ensure that there will never again be a nuclear plant, in my view at least, then adopt the Graham amendment. The point is, what do you have to show? All you have to show is a substantial dispute of fact. What could that mean?

Mr. GRAHAM. Will the Senator yield?

Mr. JOHNSTON. Not at this time.

Mr. President, what could a substantial dispute of fact be? Well, they could say there has been a change in traffic patterns; there have been some people who moved into this area and, therefore, the road is more congested than it used to be, and, therefore, the evacuation plan affects public health and safety. They would come in with traffic patterns and building permits and show, yes, indeed, that those traffic patterns have changed since that time.

Let us suppose the Nuclear Regulatory Commission looks at that and says, well, that is not a substantial dispute of fact. Then they go to the court. And during all that time this whole thing is in limbo. They go to a busy court that has a busy docket. The lawyers from the intervenors say to the judge, look, this deals with a substantial health factor. You better give a temporary injunction until you have a chance to read this.

The judge, not being skilled in nuclear matters, wanting to err on the side of safety, you know what he does. He probably grants that injunction just as they grant a stay of execution in murder cases. So you have this long period of delay where your investment of millions of dollars is held up.

Not only that, but you must have this formal hearing on the record. The Nuclear Regulatory Commission is not now and never has been required to have a so-called adjudicatory hearing. They have those when they think it is appropriate. They have more informal hearings when they think it is not appropriate.

What is an informal hearing? An example is Yankee Rowe, the proceeding just completed, where the decision was made as a result of that to shut down an existing reactor. All five Commissioners participated, but in their wisdom they thought that it could better be done, that you could better get at the truth and more rapidly get at the truth, through an informal procedure that does not involve all of the elaborate rules and regulations and technicalities of a trial proceeding. But, under the Graham amendment, you would, in fact, be required to have this adjudicatory proceeding. Why? Is it that the present system has not worked? There has been no allegation of that.

I submit that it is appropriate, as our amendment states, to let the Nuclear Regulatory Commission design the kind of hearing, where they think it is appropriate, that fits the proposal. Some issues of science can better be done informally, as in the instance I just discussed of the x ray. Sometimes, rather than have huge trials about evidence of whether the weld was correct and whether the x rays's chain of custody was correct and whether the expert could properly read it—in an informal proceeding, order another x ray, have the Commission go out and look at it. That is what the difference can be between an informal proceeding and a trial type adjudicatory proceeding. And the Nuclear Regulatory Commission is well able to do that.

As the Nuclear Regulatory Commission states, the present rules, part 52, adequately provide for any new information. As the Commission states in their letter of February 5: "The Commission believes that part 52 provides adequate means to address significant new information that arises during the licensing process."

It is not that you want to ignore that. It is that you do not want to have this automatic trigger that says all you have to do is submit a substantial dispute of fact, and then what happens? Then you have to go to your adjudicatory proceeding. You have to go to your trial proceeding. You could not even go to an informal proceeding. And it means you have the possibility of all that delay, and if you denied that, if you say it is not a substantial dispute of fact, then you have an appeal on that.

But the fact of the matter is, if you adopt the Graham amendment you do not get to that because you could not get anybody who wants to build a plant.

This bill is not about building nuclear plants. There is nothing in the grand design to build a certain number of nuclear plants. What there is, is to allow what we call the nuclear option, to allow nuclear to compete with natural gas.

Natural gas strongly supports this bill. They do not much care about the nuclear section, but they care about the rest of it. They say, if you level the playing field, natural gas is going to win every time. At least that is what my friend with Enron Natural Gas Corp. says. He thinks he can do it better.

My friends over there with coal say that in most areas of the country they can beat both nuclear and natural gas because coal is cheaper. That is the American way, to have competition.

And it is a predominant theme of this bill, to have competition. In the PUHCA reform parts, we want to have competition between the various purveyors of the various kinds of technology and allow for that competition.

We want to allow for competition between the various technologies so that you can build it, as stated here. And we believe it is true that in a competitive system, you make the best decisions on energy.

In the part on alternative fuels of our bill, where we set the scene for 4 million alternatively fueled vehicles by the year 2000, which we dealt with yesterday, and upheld this bill, we leave it to the market and individual buyers to determine whether to go to gas-powered cars or electric cars or methanol or ethanol or MTBE, or ETBE, or all of those different technologies—we leave that to the market. That is what ought to be done with respect to the various technologies.

In order to let nuclear compete, in order to stop the 14-year haitus of no new nuclear plants, you have to at least provide predictability. Mr. President, without our amendment, and indeed if the Graham amendment is agreed to, there is no predictability. There are going to be no new plants.

The Graham amendment, in my judgment, and in the judgment of those experts to whom I have spoken, is really worse than the situation prior to part 52. And the reason is that, at least under the previous rulings, those hearings took place during the period of construction. Occasionally, you had a completed plant that could not operate—occasionally. And many times you had changes brought about by the hearing, particularly after TMI, which was wasteful. It would have been better to have those determinations made in advance of that phase of construction. But at least it was during the period of construction.

What the Senator from Florida would do is wait until after all of these hearings, after the early site permit and the hearings with respect to that, after the design certification hearings, and after the 16 months of staff review and 22 months of hearings with respect to the combined license, then to be able to finish construction and only on a showing of a substantial dispute of fact to be able to shut the plant down while you have another round of hearings and perhaps appeals.

Mr. President, that is unworkable. It is the reason that the NRC has stated in its letter, which I put in the RECORD, that it is unworkable. I hope the Senate at the appropriate time will vote for my motion to table.

Does the Senator have something further he wants to say? I did not want to make that motion at this time if he has further debate.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, the Senator from Louisiana has described a proposition which would probably receive the support of virtually every Member of this body. Unfortunately, he has not described the amendment which we are going to be asked to vote upon.

The amendment which is before us, Mr. President, does not state that a petitioner, by raising any substantial dispute of fact, would have an automatic right to an adjudicatory hearing.

Let me repeat. The thresholds that would have to be met, and again I do so asking that the question be in your mind, do you believe these are reasonable standards that should allow a full hearing? Or to put it in the negative, do you believe that even after all of these have been demonstrated, that a citizen should be denied the right to a full hearing?

Those standards are that, first, there must be a substantial dispute of fact, a fact which is necessary for the Commission's decision, and that that fact cannot be resolved with sufficient accuracy except at a hearing. So if the NRC were to determine, to use the hypothetical example of the alleged welding defects, that there was another way besides an adjudicatory hearing to make an assessment of those welds, it would be their prerogative to render such a judgment that the statutory test for a hearing had not been met.

Mr. JOHNSTON. Will the Senator yield?

Mr. GRAHAM. Yes.

Mr. JOHNSTON. The Senator's amendment speaks in terms of hearing on the record. It does not allow for an informal hearing. So it is sort of an all-or-nothing-at-all proposition.

Mr. GRAHAM. But the Commission does not have to grant a hearing unless it determines, the NRC determines that the issue cannot be resolved with sufficient accuracy except at a hearing.

Mr. JOHNSTON. But hearing in that context means formal adjudicatory hearing, it does not mean informal hearing. So the NRC would not have the right to have an informal hearing to deal with that. They either have to go all the way with the adjudicatory hearing with all of—they have to go to this or have no hearing at all; is that not correct?

Mr. GRAHAM. No; that is not correct.

Mr. JOHNSTON. Your amendment does say a formal hearing.

Mr. GRAHAM. But it says the NRC is only required to grant that hearing if the NRC determines that that hearing is necessary to resolve with sufficient accuracy the issue in dispute. If the NRC judges that there are other methods by which that dispute can be resolved, then the NRC is not required to order a hearing.

But beyond those requirements, we are not talking about just any issue that might be raised. It has to meet one of two tests. It either has to be an issue that was not and could not have been raised and resolved in any proceeding for the issuance, modification or amendment of a license permit or approval of that facility. Or there must be a very serious nonconformance with the license. So we are not talking about some of those items such as traffic patterns that could have been presented at an earlier stage. We are talking about issues that were not and could not have been raised and resolved at an earlier stage.

Mr. JOHNSTON. Will the Senator yield?

Mr. GRAHAM. Yes.

Mr. JOHNSTON. When I say traffic pattern, I am talking about some change in traffic pattern. Under the Nuclear Regulatory Commission rules, you can get a site permit and then some time would go by between that permit—might be years—before you finally finished the plant. So there are always going to be changes in traffic patterns which could, in fact, affect, be it a dispute of fact, as to whether the evacuation plan was safe or not. Then you could almost always be able to make that allegation.

Mr. GRAHAM. I can tell the Senator that from my own experience in a State that has a powerplant siting law, obviously the factors that you take into consideration in rendering a judgment as to whether a site is appropriate for a powerplant are not the factors that relate to the date that you are holding the hearing. They relate to factors that are going to be likely to occur over the life of that powerplant, which includes the period that the site will be awaiting construction, the period of construction, and the much longer period of operation of the plant.

So I would find it to be bizarre if, in fact, projections on something as fundamental as demographic and economic and transportation changes that were reasonably foreseeable, were not taken into account at the time of the initial site consideration and if, in fact, there were circumstances that were widely at variance with the assumptions at the time of the original site judgment, they may well be exactly the kind of circumstances that would, in fact, justify a full hearing.

So that is one test of the nature of the fact that has to be in dispute. Or, second, a showing has been made that there is a nonconformance with the license; that that nonconformance had not been corrected and that that nonconformance could materially and adversely affect the safe operation of the facility.

It is hard for me to make the case that if a citizen can meet those heavy burdens that we should say that citizen does not have a right to have a full adjudicatory hearing on those matters, particularly in light of the fact that

the NRC has a parallel right under both of these amendments to allow the plant to start operation in spite of having made all those showings, if the NRC would satisfy itself that it is safe to do so.

I believe that is a very reasonable balancing of the public interest and safety, the industry's interest in predictability, and our broader interest in building a level of confidence and credibility in our nuclear regulatory agency.

Mr. WELLSTONE. Will the Senator yield?

Mr. GRAHAM. Yes, I will.

Mr. WELLSTONE. Mr. President, part of my concern with the Senator's amendment is that you have moved away from the two-step licensing process. What we previously had was an opportunity for citizens to raise concerns at the time of construction and then, between construction and the time the plant was to go operational, there may have been a whole set of new concerns not related to the original hearing having to do with design, maybe faulty design or new data on earthquake faultlines or evacuation procedures. I think that is important as we now are seeing a whole new technology developed at nuclear power plants.

Let me pose a hypothetical question about the Senator's amendment. Say I live in a community where there is a nuclear power plant site. I am concerned about my family. People have these concerns. People are frightened about nuclear power and they want to be assured that if this is to be part of our energy future, their concerns are going to be dealt with.

Is the intent of the Senator's amendment to make sure people will have some kind of judicial appeal? I understand that these are not frivolous concerns. There is a high threshold test to make sure these are serious, legitimate safety concerns. Is that the intent of the amendment?

Mr. GRAHAM. It is the intent, and further, that those concerns be of a nature that could not have been resolved at an earlier date so that you deal with the problem of the person who procrastinates, maybe intentionally or unintentionally or that they be for issues that relate to nonconformance with the license under which the plant was constructed where that nonconformance has gone uncorrected and which raises significant safety issues.

I believe that the residents in that neighborhood would rest ill at night feeling that a plant in their neighborhood might open subject to those prima facie allegations of serious new information or nonconformance in a manner that would threaten the safety of the plant and that those issues would not have an opportunity for full airing before the plant was allowed to permanently operate.

Mr. WELLSTONE. Under one-step licensing, if I lived near a nuclear plant and I raised questions which were not part of the original public hearing process, would I have the opportunity to have my concerns heard? I would have no appeal, is that correct? The Senator is attempting to give the public the assurance that they have a right to be heard? Am I correct?

Mr. GRAHAM. That is correct. Without this amendment, it will be totally in the discretion of the NRC as to whether you will have any right for consideration of your complaints.

Mr. WELLSTONE. If the Senator will yield further, to enter into this debate, let me express my concern. What the Senator from Florida, Senator GRAHAM, and also Senator FOWLER, from Georgia, are attempting to do is to make sure that people who live in these communities are not cut out of this very important stage of the public hearing process. The public has a serious threshold test that has to be met. Their concerns are not frivolous. They have a real burden of proof that has to be met. Then it seems to me by definition at this point in the process of judicial appeal that when people have raised legitimate concerns, the next logical step would be to not allow interim operation.

Now you allow interim operation, and as I have explained to both Senator GRAHAM and Senator FOWLER, this is my concern. Why go forward with the interim operation? Could the Senator explain this to me? I think this amendment does not go far enough.

Mr. GRAHAM. As I indicated in earlier debate, I recognize that one of the difficulties with being a reasonable Senator is that you do not get the love and affection of either of those who are on both sides.

Mr. WELLSTONE. Excuse me. Will the Senator yield. Am I an unreasonable Senator as opposed to being a reasonable Senator?

Mr. GRAHAM. We would all consider ourselves to be the center of the universe, and everyone takes their position in relationship to that.

We have included a provision that would allow the NRC—even after it had made these very high-threshold findings relative to a complaint of a citizen and had therefore started the process for a full hearing—to permit the plant to operate. Under either our amendment or under the amendment of the Senator from Louisiana we would still allow the NRC, if it can determine that the plant has been built in conformity with the combined license and that all of the NRC regulations have been met to permit the plant to commence operation pending a resolution of outstanding issues in a hearing.

The reason for this provision in our amendment is to give some additional certainty to the industry which has committed itself to this plant that when the plant is finished, if it is built in conformity to plans and NRC regulations, it could operate. I believe that is a reasonable balancing of industry and public interests as long as the public is assured that it can have that full adjudicatory hearing when serious issues have been raised as to the safety of the plant.

Mr. WELLSTONE. Will the Senator yield for a question?

The judicial appeal that would be granted for citizens who have these concerns is important after all. There have been some pretty serious accidents and people do have some real concerns about nuclear power. The appeal in part is directed at the NRC, am I not correct?

Mr. GRAHAM. It would be the NRC which would, in the first instance, be the adjudicatory agency.

Mr. WELLSTONE. I do not understand. What the Senators are saying with their amendment is the NRC is assured that it can go ahead if it has met the conditions. But by definition the concerned people who have now requested this hearing are questioning the NRC, right? They are just not confident in this agency. In this day and age people in our country are pretty concerned about the centralized agencies. It seems to me that the Senators are trying to pass a proposal which they feel is a good compromise. This is what they have done and perhaps they believe the proposal will pass for that reason. But my concern is that these concerns are dangling out 9 there and people are very worried. The people need a right to judicial appeal. It seems to me the people who go through this process, to have a decision rendered before the plant goes into operation.

Mr. GRAHAM. We are saying that if the NRC can determine, based on conformity with the license issued and its own regulations, that the plant is safe, then the NRC is authorized to allow that plant to operate on an interim basis pending a resolution of any outstanding disputes. That is a pragmatic attempt to balance two interests which have for the history of this industry been at war. This compromise includes high standards of safety but also provides a level of stability and predictability that would give confidence to the industry, its stockholders, and investors to go forward with a nuclear plant in the first instance.

Mr. WELLSTONE. Let me say to my friend from Florida, and also the Senator from Georgia, that is for me kind of good news-bad news. I really would like to give both of the Senators a tremendous amount of credit for this. I think the Senators really have improved upon the provision now in the bill. We all have our own views about how much of the energy future of our country will be based upon nuclear power. But it seems to me that even if you were a proponent of adding 200

gigawatts of nuclear generating capacity the last thing you would want to do would be to cut the public out of the participation process and deny people some kind of basis for appeal. This would lead to a policy based upon coercion. You have a policy which really I think will cause people to be fearful and will lead to a great deal of mistrust.

The good news is that through this amendment the Senators are attempting to address that very real concern.

I understand the industry is concerned about delay. I look at the record of what the two-step licensing was all about, I see many instances of the need for public participation. The public has contributed to the safe operation of nuclear plants by coming forward and identifying very serious problems before those plants went operational. This demonstrates the need for citizens in this country to have a voice over decisions that were very important to them.

So I want to say to my good friend from Florida, and also the Senator from Georgia, I think this amendment is a very important amendment in the right step. I still have some concerns about the interim operation of the plant, and I am not quite sure yet how to deal with that.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Did the Senator from Georgia wish to speak?

Mr. FOWLER. I say to my chairman, in a moment. I will be glad for the Senator to go ahead. I am in no hurry.

Mr. JOHNSTON. I was ready to make a motion to table.

Mr. FOWLER. Give me 1 minute.

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

The PRESIDING OFFICER. The Clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. WALLOP. Mr. President, I send an amendment to the desk on behalf of Senator BRADLEY, Senator DOMENICI, Senator WIRTH, Senator SEYMOUR, Senator KENNEDY, Senator GORTON, Senator KERRY, Senator COHEN, Senator WELLSTONE, Senator KOHL, Senator LAUTENBERG, Senator CRANSTON, Senator DURENBERGER, Senator LEAHY, Senator LIEBERMAN, and Senator PELL.

The PRESIDING OFFICER. The Chair would notify the Senator from Wyoming that there are two——

Mr. WALLOP. Mr. President, I ask unanimous consent that the pending business be temporarily laid aside.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. WALLOP. Mr. President, this is an amendment which the administration supports, Senator JOHNSTON and I support, to take the provisions regarding import of Canadian gas that are in the bill out.

AMENDMENT NO. 1577

(Purpose: To amend section 11104 of S. 2166 to strike subsection (e) pertaining to natural gas imports)

Mr. WALLOP. Mr. President, 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 Wyoming [Mr. WALLOP], for Mr. BRADLEY (for himself, Mr. DOMENICI, Mr. WIRTH, Mr. SEYMOUR, Mr. KENNEDY, Mr. GORTON, Mr. KERRY, Mr. COHEN, Mr. WELLSTONE, Mr. KOHL, Mr. LAUTENBERG, Mr. CRANSTON, Mr. DURENBERGER, Mr. LEAHY, Mr. LIEBERMAN, Mr. PELL, and Mr. JOHNSTON) proposes an amendment numbered 1577.

On page 288, strike lines 10 through 25 and, on page 289, lines 1 through 15, and redesignate succeeding subsections accordingly.

Mr. WIRTH. Mr. President, during committee markup of the energy bill, Senator DOMENICI and I won adoption of an amendment which became section 1104(e) of the bill. There was some considerable controversy over the Wirth-Domenici language, but I am glad to say that we have come to a point where the problem Senator DOMENICI and I were trying to address with our legislative language has finally been recognized and addressed by the Federal Energy Regulatory Commission, which is well on its way to resolving much of the issue that we raised.

For that reason, I am glad to support my colleague from New Jersey, Senator BRADLEY, in removing the Wirth-Domenici language from the bill at this time, as both sides in this argument agree that we do not wish to interfere with the FERC rulemaking now underway, or send a signal that in any way could be interpreted as calling on FERC to rethink the position it is now espousing.

The issue I raised in the committee was simple in concept, but incredibly complex in its details. For the benefit of my colleagues, I will lay out the simple version.

North America is blessed with abundant reserves of natural gas, and much of it is in the West. There is a lot of it in the Rocky Mountain West of the United States, where both Senator DOMENICI and I come from; and there is a lot of it in Western Canada, as well.

The fastest growing market for that gas is in our Northeastern States, and they have been seeking gas supplies. Now, because of the distances to the West, pipeline transportation makes up a fairly significant portion of the price of that gas.

So far, so good. But here has been the problem. The cost of that transportation is set by Government regulation. And while we have a free-trade agreement with Canada, we do not have a coordinated set of regulations for setting pipeline rates.

That would be fine if pipelines simply charged a fee for every cubic foot of gas. The pipelines would simply compete, price against price. But its more complicated than that. In effect, pipeline rates are paid in two bills—one to reserve space in the pipeline, and one to pay for actually moving gas through the pipe.

The Canadians had a system that put most of their charges into the reservation charge—and we had a system that put more charges into the actual delivery charge. The result was a potential rate tilt that disadvantaged people trying to sell gas moving through American pipelines. Why is that? Because after a buyer had made sufficient reservations to cover all their needs, plus a reserve for cold weather, even if they made reservations on both United States and Canadian pipelines, they would, when it came time to buy more gas for actual delivery, always take the Canadian gas first, because the actual delivery charge for it would be far less than for the United States pipe.

That was not the result of a conspiracy—it was simply the result of two different regulatory systems serving one market. The existence of a free-trade agreement between our two countries did nothing to address this. There wasn't a trade barrier here. But there were two different regulatory systems which were out of sync, which created a real competitive difference.

Now, Mr. President, the FERC has proposed a major revision of the regulatory system in the United States, to make it very similar to the Canadian system. I applaud that, Mr. President, and I believe it will result in a much better integration of the gas supply and demand in both our countries.

The Wirth-Domenici language would have been a new legislative directive to FERC. It would, at a minimum, require a formal response from the Commission, and perhaps even require a rulemaking. Frankly, that could end up being a distraction and perhaps even cause delay in what FERC has already undertaken to address the problem Senator DOMENICI and I wanted brought to their attention.

Given this turn of events, Mr. President, I am glad to support removing that language from the bill, and to join Senator BRADLEY in urging that all language on gas import issues be kept out of this bill.

AN EXPLANATION OF PIPELINE RATE DESIGN DISPARITY, AND ITS EFFECT

The rate designs for natural gas pipelines adopted by Canada's National Energy Board [NEB] and America's Federal Energy Regulatory Commission

[FERC] are markedly different and create competitive distortions in natural gas markets. These competitive distortions affect the ability of United States pipelines and producers to compete effectively with Canadian pipelines and producers.

The rate design required by FERC places a significant portion of the total fixed costs of a domestic pipeline into the commodity cost component of the pipeline's rates. Conversely, the NEB pipeline rate methodology keeps these costs classified as fixed costs collected through a demand charge and assigns almost none of them to the commodity component.

If a purchaser, like a local distribution company in the Northeast, buys gas from both Canada and the United States, the decision as to which natural gas to buy on a daily or monthly basis is made based on the per unit cost of that incremental volume, that is, the commodity charge, not the total unit cost of gas.

The commodity charge for each unit of Canadian gas is equal to the wellhead price, plus other variable costs—mostly compressor fuel. The commodity charge for each unit of domestic gas is equal to wellhead price, plus other variable costs—mostly compressor fuel—plus substantial additional charges representing the pipeline's fixed costs which FERC assigns to the commodity component of a pipeline's rates. Thus, because of FERC's rate design policies, each additional unit of domestic gas is burdened with costs not present in the commodity charge for transportation of Canadian gas.

Because of the differences in rate design, a purchaser faced with the choice of buying Canadian or domestic gas will compare commodity rates, rather than total prices. If so, the purchaser will always buy Canadian gas unless the domestic producer reduces its wellhead price by an amount at least equal to the amount of fixed costs FERC assigns to the pipeline's commodity component. The disadvantage suffered by domestic producers will vary from at least 18 to 42 cents per Mcf depending on what assumptions are used. Ten cents per Mcf means $1.8 billion per year in potential cost penalties to domestic natural gas producers.

The disadvantage suffered by domestic producers and pipelines carrying domestic gas is present whether the Canadian-supplied pipeline is operating as a merchant or merely as a transporter of natural gas. This is true because, as stated above, the anticompetitive effect of Canadian rate methodology in American markets results from the different way Canada and the United States treat fixed gathering and transmission costs, and has nothing to do with gas costs.

This problem is apparent in a project like Iroquois, where Northeast LDC's purchase gas supplies in Canada and transport the gas from Alberta to the New York border on TransCanada's system. Under TransCanada's fixed-variable rate design, these gas supplies have a direct competitive advantage because FERC has not permitted U.S. pipelines to implement a rate design competitive to that used by TransCanada for 2,000 miles of transportation. Thus, even if a competing U.S. pipeline were built, supplies carried by the U.S. pipeline would always be second choice because FERC's assignment of fixed costs to the commodity component makes domestic gas appear more expensive.

This rate design difference is the primary reason that only minuscule amounts of United States gas are sold in Canada despite the fact that most of our production is much closer to eastern Canadian markets than their own production in Alberta.

Neither DOE nor FERC were, in the past, willing to remedy this discriminatory situation or allow an evidentiary hearing to examine two crucial issues: First, the discriminatory impact of FERC-imposed pipeline rates when domestic gas competes for the same markets with Canadian supplies; and second, the availability of cheaper, domestically supplied alternatives based on the same rate design used in Canada.

Part of that reluctance was the administration's belief—a wrong one, I believe—that this would lead down a road that would be in conflict with the United States-Canada Free-Trade Agreement. They were so worried about the consequences of trying to fix this problem by attaching additional terms and conditions to natural gas coming from Canada into this country, that they failed to notice that they had the power to fix the disparity here, by addressing United States pipeline rate design.

Now, the FERC is doing that. They are proposing to direct United States pipelines to use very similar rate designs to those used by Canada's NEB. FERC has already granted this full-fixed variable type rates to some new U.S. pipelines, including segments of the Iroquois pipeline. This is a very positive development, Mr. President. I believe that a closer coordination between the pipeline rate systemology used by our two countries is essential to truly integrating our markets on terms fair to both of us, and I applaud FERC for its initiative in this regard.

Mr. SEYMOUR. Mr. President, I wish to thank my good friend from New Mexico for his amendment.

I along with my distinguished colleague from New Jersey have been working to eliminate section 11104(e) of the Energy bill for months. I strongly believe that this language will limit natural gas imports from Canada and drive up the price of natural gas for California's consumers. Today, Senator BRADLEY and I were going to offer an amendment to strike the natural gas import provisions in S. 2166. I am pleased that the distinguished Senator from New Mexico has now made that unnecessary.

Mr. BRADLEY. Mr. President, the invasion of Kuwait emphasized for the entire world the risks of overdependence on vulnerable oil supplies. Many in Congress and the administration have attempted to craft legislation to limit the risks to Americans. Most experts see as the central element of these policies an effort to substitute other secure fuels and energy conservation for oil. Unfortunately, I believe one element of the National Energy Security Act could have exactly the opposite effect.

The bill includes provisions that move jurisdiction over the authorization of natural gas imports from the Department of Energy [DOE] to the Federal Energy Regulatory Commission [FERC]. Additionally, the bill requires FERC to restrict gas imports unless the FERC agrees to redress anticompetitive impacts on U.S. gas producers. The impact of this language I believe, would be to slow approval of international gas pipeline projects and reduce access to competitively priced, reliable and plentiful Canadian gas supplies.

Frankly, I am unaware of any evidence that DOE's authority over gas imports is not working, or that FERC's processing of import applications would be any more efficient. In addition, FERC has thoroughly examined the competitive effects on domestic producers from natural gas import projects, and has found no competitive disadvantage for domestic suppliers. Evidence that domestic producers are competitive is demonstrated by the fact that they continue to supply well over 90 percent of the market nationwide.

Consumers in no less than 39 States receive imported natural gas. Today, Canadian gas producers are willing to accept competitive gas prices under long-term contracts. In order for consumers to continue to enjoy the benefit of access to these firm supplies, we in Congress should not require FERC to protect domestic gas suppliers from Canadian competition.

Mr. President, the sponsors of the language that will be removed by my amendment were concerned about an issue described as rate-tilt, which they maintained conferred an artificial advantage to Canadian producers. While I would contest the substantive impact of rate-tilt, the FERC has clearly demonstrated a sensitivity to the issue. Indeed, whatever rationale once was used to defend the bill's language has been rendered moot by the administrative action taken at the FERC.

I am very pleased that the original sponsors of this legislative language

are now joining me and agreeing to its deletion. The gas industry retains a bright future as the source of clean and secure energy. Intra-industry squabbles that isolate or eliminate consumers and producers do nothing to promote the confidence needed to keep the gas industry ascendant.

Mr. WALLOP. Mr. President, I ask unanimous consent that a letter from Deputy Secretary of Energy, from the Independent Petroleum Association of America, a letter to JOHNSTON opposing the Wirth-Domenici amendment, signed by a bipartisan coalition of 51 Senators; An Administration statement in opposition to the Wirth-Domenici amendment; a list of 39 States and utilities that rely directly on Canadian gas supplies; and representative letters in opposition to the Wirth-Domenici amendment, including one from the Interstate Natural Gas Association of America, the Office of the Ohio Consumers' Counsel on behalf of the National Association of State Utility Consumer Advocates and a strongly worded letter from a Florida gas utility be printed in the RECORD.

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

THE DEPUTY SECRETARY OF ENERGY,
Washington, DC, February 4, 1992.

Hon. PETE V. DOMENICI,
U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: As we approach consideration of S. 2166, I am writing to ask that you consider withdrawing Section 1104(e) relating to natural gas imports. As you know, the Administration shares your deep concern for the plight of U.S. producers trying to cope with the current depressed U.S. gas market. We have worked with you to address the difficulties U.S. natural gas producers have encountered by reason of the disparity in rate treatment of U.S. and Canadian natural gas pipelines. In addition, since this legislation was approved by the Energy Committee, the Federal Energy Regulatory Commission (FERC) has proposed a rule which, among other things, would require as a general matter that U.S. pipelines use the same rate design, straight fixed variable, used by Canadian pipelines.

Despite our attempts to develop a consensus on legislation to address this issue, it appears that there remains great division and controversy within the natural gas industry on this provision. Accordingly, I believe it would be in the best interest of the gas industry for you to withdraw Section 11104(e). Please be assured that the Department is committed to seeing FERC's proposal to eliminate the disparity between U.S. and Canadian gas pipeline rate designs implemented. Rather than jeopardizing, by a protracted debate over Section 11104(e), other provisions of the natural gas title of S. 2166 that would benefit U.S. gas producers, we believe it would be better to focus on implementing the remedies already proposed by FERC. I would be pleased to discuss these matters with you.

Sincerely,

LINDA G. STUNTZ,
Acting Deputy Secretary.

INDEPENDENT PETROLEUM
ASSOCIATION OF AMERICA,
Washington, DC, February 6, 1992.

Hon. PETE V. DOMENICI,
U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: The Independent Petroleum Association of America is grateful for your leadership and steadfast commitment to build a competitive natural gas market that will benefit consumers and producers alike.

Your efforts over several years have been instrumental in getting U.S. regulatory agencies to address the international natural gas regulatory differences that resulted in competitive disadvantages for domestic producers and higher natural gas costs for consumers. The IPAA believes that U.S. regulatory agencies are moving to prevent economic hardships that result from the differences in pipeline rate design policies used by the United States and our trading partners.

The view of the progress being made by the Federal Energy Regulatory Commission and the Department of Energy on this matter, the IPAA concurs in and support your decision to encourage the Senate to remove all language on the subject from national energy strategy legislation, S. 2166, and to commit its conferees to hold firm to the Senate's position in a conference with the House of Representatives.

Thank you again for your leadership on this important issue.

Sincerely,

DENISE A. BODE.

U.S. SENATE,
Washington, DC, October 17, 1991.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The National Energy Security Act of 1991, S. 1220, contains provisions which, if enacted into law, would seriously harm the ability of United States consumers to obtain natural gas from Canada.

We are writing to express our opposition to these provisions. At a time when environmental and geopolitical concerns are pointing toward increased use of natural gas in the United States market, it hardly seems reasonable or appropriate to throw up unnecessary new barriers to an abundant and reliable source of supply.

We do not believe legislation emerging from the Senate should include anti-import provisions.

Sincerely,

Warren Rudman, Larry E. Craig, John Seymour, Daniel Patrick Moynihan, Bill Bradley, Ted Kennedy, John F. Kerry, George Mitchell, Frank R. Lautenberg, Herb Kohl, John H. Chafee, Bob Packwood, Patrick Leahy, Richard H. Bryan, Bill Cohen, Steve Symms, Joe Lieberman, Jim Jeffords, Dave Durenberger, Chris Dodd, Bob Smith, Alan Cranston, Alfonse D'Amato, and Paul D. Wellstone.

Slade Gorton, Barbara A. Mikulski, Claiborne Pell, Jim Exon, John Glenn, Alan J. Dixon, Paul Simon, Dan Coats, Tom Daschle, Chuck Grassley, Dick Lugar, Bob Kasten, Brock Adams, Paul Sarbanes, Don Riegle, Carl Levin, Bob Kerrey, Harry Reid, Howell Heflin, Tom Harkin, Arlen Specter (Senator Wallop S. 1220 Natural Gas provisions), Larry Pressler, Dale Bumpers, Joe Biden, Conrad Burns, Bill Roth, and Harris Wofford.

THE SECRETARY OF ENERGY,
Washington, DC, April 18, 1991.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We have reviewed the joint staff recommendations on amendments to Title X to S. 341, and have received several proposed additional amendments to that bill. Having reviewed these, I want to summarize our position on these proposals, and to review more generally the Department's position on natural gas industry issues. The Administration's comprehensive legislation included significant reforms for the natural gas industry. Natural gas is an abundant, economical and environmentally-preferable fuel. Our goals are to:

Further the development of a competitive, efficient, and integrated North American natural gas market.

Expand the use of natural gas through expedited regulatory review of applications to construct natural gas facilities.

Reduce regulation of natural gas sales and transportation services, substituting market forces and competition for such regulation.

Deregulate natural gas sales where markets are found to be competitive.

The Department cannot support natural gas legislation that would:

1. Limit to new markets the opportunity to use optional expedited construction procedures.

Rationals: This prevents existing customers, both producers and consumers, from gaining the benefits of competition by protecting presently regulated entities from competitive pressures.

This is a mature industry; there are few markets not presently receiving some natural gas service at *either end of the pipe.*

2. Restrict the importation of Canadian natural gas, contrary to the Canadian Free Trade Agreement.

Rationals: Imported gas represents nearly 10% of U.S. consumption, proposion which will lead to regulatory barriers and delay could threaten the continuous flow of this gas. In addition, the secretary of Energy cannot be charged with undertakings which conflict with any international treaty obligations.

I appreciate your consideration of our views.

Sincerely,

JAMES D. WATKINS,
Admiral, U.S. Navy (Retired).

ALABAMA

Alabama is served by the following interstate pipelines that include imported gas in their supply: Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation.

Their sales customers in Alabama include: Alabama-Tennessee Natural Gas Co., Central Gas Co., North Alabama Gas District, Northwest Alabama Gas District, Red Bay water Works & Gas, Tennessee River Development Company, and Town of Vina Gas Board.

ARKANSAS

Arkansas is served by the following interstate pipelines that include imported gas in their supply: Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation.

Their sales customers in Arkansas include: Arkansas Louisiana Gas Co. and Harrisburg Water & Gas.

CALIFORNIA

The following companies in California purchase imported gas directly: American Hun-

ter (Industrial and LDC customers), Amoco Trading, Chevron U.S.A., Gasmark, Inc., Gilroy, IGI Resources, Leslie Salt, Mock Resources, Natural Gas Clearinghouse, Pacific Gas & Electric Company, Redwood Resources, Inc., San Diego Gas & Electric Co., Simpson Paper, Southern California Gas Co., Spreckels Sugar, Sunrise Energy, Unocal, and Windward Energy & Marketing.

COLORADO

The following companies in Colorado purchase imported gas directly: Colorado Interstate Gas, Greeley Gas Co., Mock Resources, and Presidio Gas Resources.

Colorado is also served by the following interstate pipelines that include imported gas in their supply: Northern Natural Gas Company and Northwest Pipeline Corporation.

Their sales customers in Colorado include: Greeley Gas, Greeley Gas Company, Rocky Mountain, and Westgas.

CONNECTICUT

The following companies in Connecticut purchase imported gas directly: Connecticut Natural Gas Corporation, Tennessee Gas Pipeline, The Southern Connecticut Gas Company, and Yankee Gas Services Company.

Connecticut is also served by the following interstate pipeline that includes imported gas in its supply: Tennessee Gas Pipeline Company.

Its sales customers in Connecticut include: Connecticut Natural Gas Corporation, Southern Connecticut Gas Co., and Yankee Gas Services.

FLORIDA

The following company in Florida purchases imported gas directly: Florida Power and Light.

IDAHO

The following companies in Idaho purchase imported gas directly: Amalgamated Sugar Company, Ash Grove Cement, IGI Resources, Intermountain Gas Company, J.R. Simplot Co., McCain, and Northwest Natural Gas Co.

Idaho is also served by the following interstate pipeline that includes imported gas in its supply: Northwest Pipeline Corporation.

Its sales customers in Idaho include: Intermountain Gas, Paiute Pipeline, and Washington Water Power.

ILLINOIS

The following companies in Illinois purchase imported gas directly: Kaztek Energy Management, Northern Illinois Gas, Santanna Natural Gas, Semco Energy Services, and Triumph Gas.

Illinois is also served by the following pipelines that include imported gas in their supply: Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, and Texas Eastern Transmission Corporation.

Their sales customers in Illinois include: Cairo Public Utility, Central Illinois Light Company, Central Illinois Public Service Co., City of Anna, City of Auburn, City of Creal Springs, City of Grand Tower, City of Jonesboro, City of Morton, City of Pickneyville, City of Pittsfield, City of Salem, City of Sullivan, and City of White Hass.

City of Winchester, Consumers Gas Company, Grayville Public Utility, Illinois Power Company, Interstate Power Company, Iowa-Illinois Gas and Electric Company, Mississippi River Transmission, Mt. Carmel Public Utility Company, North Shore Gas Company, Northern Illinois Gas Company, Northern Indiana Public Service Company, Peoples Gas Light and Coke Company, Town of New Harmony, United Cities Gas Company, Village of Bethany, Village of Cobden, Village of Divernon, Village of Enfield, Village of Findlay, Village of Franklin, Village of Norris City, Village of Pawnee, Village of Pleasant Hill, Village of Riverton, Village of Tamms, Village of Thebes, and Wisconsin Southern Gas Company.

INDIANA

The following companies in Indiana purchase imported gas directly: ANR Pipeline Co., BF Goodrich, and Citizens Gas Supply Corp.

Indiana is also served by the following interstate pipelines that include imported gas in their supply: Panhandle Eastern Pipe Line Company and, Texas Eastern Transmission Corporation.

Their sales customers in Indiana include: Citizens Gas and Coke Utilities, City of Batesville, City of Huntingburg, City of Jasper, Community Natural Gas Company, Indiana Gas Company, Indiana Natural Gas Corporation, Southern Indiana Gas & Electric, Kokomo Gas & Fuel Company, Lawrenceburg Gas Company, Midwest Natural Gas Corporation, Northern Indiana Fuel & Light Company, Northern Indiana Public Service Company, Ohio Valley Gas Corporation, Richmond Gas Corporation, Town of Bainbridge, Town of Lapel, Town of Montezuma, Town of Napoleon, Town of Osgood, Town of Poseyville, Town of Roachdale, Town of Pittsboro, Westfield Gas Corporation, and Westport Gas Company.

IOWA

The following companies in Iowa purchase imported gas directly: Cibola Corporation, Enroe Gas Marketing, Iowa Electric, Midwest Gas, Natural Gas Clearinghouse, Natural Gas Pipeline, Peoples Natural Gas Co., and Terra Industries.

Iowa is also served by the following interstate pipelines that include imported gas in their supply: Natural Gas Pipeline Company of America and Northern Natural Gas Company.

Their sales customers in Iowa include: Cascade Municipal Gas Systems, Cedar Falls Utilities, City of Brooklyn, IA, City of Gilmore, City of Lorimor, City of Preston, City of Remson, City of Rolfe, City of Sabula, City of Sac City, City of Sanborn Municipal Natural Gas, City of Tipton, City of Waukee, City of West Bend, City of Whitemore, Coon Rapids Municipal Natural Gas, Corning Municipal Utilities, Emmetsburg Municipal Gas, Gilmore City, Graettinger Municipal Gas System, Guthrie Center Municipal Utilities, and Harlan Municipal Utilities.

Hawarden Office of Public Works, Illinois Gas and Electric, Interstate Power Company, Iowa Public Service Company, Iowa Southern Utilities Company, Iowa-Illinois Gas and Electric Company, Iowa Electric Light and Power Company, Lake Park Municipal Utilities, M.N.G.S.Sioux City, Manilla Municipal Gas, Manning Municipal Gas, Midwest Gas, Minnegasco, Inc., Municipal Gas-Emmetsburg, Municipal Gas Service, Municipal Gas System-Graettinger, Municipal Natural Gas, Municipal Natural Gas-Sanborn, Municipal Utilities, Municipal Gas of Cascade, IA, Osage Municipal Utilities, People's Natural Gas-Utilicorp, Peoples Natural Gas Company, Rock Rapids Municipal Utilities, Sioux Center Municipal Natural Gas System, City of Sabula, Town of Brighton, Town of Lenox, Town of Montezume, Town of Wellman, Woodbine Municipal Gas System, and Interstate Power Company.

LOUISIANA

The following companies in Louisiana purchase imported gas directly: Panhandle Trading Co. and Pontchartrain Natural Gas.

Louisiana is also served by the following interstate pipelines that include imported gas in their supply: Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation.

Their sales customers in Louisiana include: Arkla for Beebe & Cabot, Arkla for Paragould, Arkansas, Elizabeth Natural Gas Co., Energas Co./D.E. St Romain, Gas Utility District of Vernon, Mississippi Gas Corporation, New Roads Gas System City, Pointe Coupee Parish, LA Gas, Louisiana Gas Service Co., Starks Water and Gas Inc., Texas Gas, Town of Grand Isle, Town of Harrisonburg, Village of Forest Hill, Village of Morganza, and Village of Provencal.

KANSAS

Kansas is served by the following interstate pipelines that include imported gas in their supply: Natural Gas Pipeline Company of America, Northern Natural Gas Company, and Panhandle Eastern Pipe Line Company.

Their sales customers in Kansas include: City of Agenda, City of Hazelton, City of LaCygne, City of Louisburg, City of Offerle, Kansas Nebraska Natural Gas, KPL Gas Service Company, Miami Pipeline Company, Peoples Natural Gas Company, Producers Gas Equities, Inc., St. Croix Valley Natural Gas Company, The Kansas Power & Light Company, Twin County Gas Company, and Western Gas Utilities.

KENTUCKY

Kentucky is served by the following interstate pipelines that include imported gas in their supply: Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation.

Their sales customers in Kentucky include: City of Columbia, City of Edmonton, City of Grayson, City of Liberty, City of Olive Hill, City of Somerset, City of Tompkinsville, Delta Natural Gas Co., Inland Gas Company Inc., Morehead Utility Board, and Western Kentucky Gas Co.

MAINE

The following company in Maine purchases imported gas directly: Bay State Gas.

MARYLAND

The following company in Maryland purchases imported gas directly: Baltimore Gas & Electric Company.

MASSACHUSETTS

The following companies in Massachusetts purchase imported gas directly: Altresco Pittsfield, LP, Bay State Gas, Berkshire Gas, Boston Gas, Citizens Gas Supply Corp., Colonial Gas Company, Essex County Gas Co., Fitchburg Gas and Electric, Haverhill Gas Co., Mass Power Project, and New England Power Company.

Massachusetts is also served by the following interstate pipelines that includes imported gas in its supply: Tennessee Gas Pipeline Company.

Its sales customers in Massachusetts include: Berkshire Gas Company, Blackstone Gas Co., Boston Gas Co., City of Westfield Gas and Electric, Colonial Gas Co., Commonwealth Gas Co., Essex County Gas Co., Fitchburg Gas and Electric Light Co., and Holyoke Gas and Electric Department.

MICHIGAN

The following companies in Michigan purchase imported gas directly: Allied Producers Gas Service, Inc., ANR Michigan Storage, BP Chemicals, Inc., Brymore Energy Inc.,

Coastal Gas Marketing, Coenergy Ventures, Consumers Power Company, Harbert Energy, MichCon Trading, Michigan Consolidated Gas Company, Michigan Gas Company, Midcon Marketing Corp., Midland Cogeneration Venture, National Steel, Semco Energy Services, Inc., and Unigas.

Michigan is also served by the following interstate pipelines that include imported gas in their supply: Northern Natural Gas Company and Panhandle Eastern Pipe Line Company.

Their sales customers in Michigan include: Battle Creek Gas Company, Citizens Gas Fuel Company, Michigan Gas Company, Michigan Gas Storage Co., Michigas Gas Utility Company, Northern States Power Co., Peninsular Gas Company, People's Natural Gas—Utilicorp., and Southeastern Michigas Gas Company.

MINNESOTA

The following companies in Minnesota purchase imported gas directly: Aquila Energy Company, Cibola Corporation, City of Perham, MN, City of Warroad, Great Plains Natural Gas Co., Minnegasco, Minnesota Intrastate Transmission, and Northern Minnesota Utilities.

Minnesota is also served by the following interstate pipelines that include imported gas in their supply: Northern Natural Gas Company and Viking Gas Transmission Company.

Their sales customers in Minnesota include: Argyle, Minnesota, Austin Utilities, Circle Pines Utilities, City of Stephen, City of Two Harbors, Dept. of Public Utilities of Virginia, MN, Duluth Department of Water, Great Plains Natural Gas Company, Hibbing Public Utilities, Hutchinson Utilities Commission, Interstate Power Company, Iowa Public Service Company, Lloyd V. Crum, Jr., Midwest Gas, Minnegasco, Inc., Minnesota-Austin Utilities, and New Ulm Public Utilities Commission.

Northern Minnesota Utilities, Northern States Power Company, Owatonna Public Utilities, People's Natural Gas—Utilicorp., Peoples Natural Gas, Public Utilities—Owatonna, Public Utilities—Hibbing, Sheehan's Natural Gas, Inc., Village of Hallock, Village of Hawley, Village of Lakepark, Village of New York Mills, Village of Perham, Village of Warren, Virginia Department of Public Utilities, and Western Gas Utilities.

MISSISSIPPI

Mississippi is served by the following interstate pipelines that include imported gas in their supply: Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation.

Their sales customers in Mississippi include: Caledonia Natural Gas District, City of Batesville, City of Booneville, City of Corinth Utility Department, City of Meadville, City of New Albany, City of Ripley, City of Senatobia, Entex Inc., Holly Springs Utility Department, Kerr-McGee Chemical Corp., Mantachie Natural Gas District, Mississippi Valley Gas Company, Pontotoc Natural Gas, Town of Ashland, Town of Baldwyn, Town of Belmont, Town of Bude, Town of Flora, Town of Fulton, Town of Gloster, Town of Shuqualak, Town of Utica, and Town of Weir.

MISSOURI

Missouri is served by the following interstate pipelines that include imported gas in their supply: Natural Gas Pipeline Company of America, Panhandle Eastern Pipe Line Company, and Texas Eastern Transmission Corporation.

Their sales customers in Missouri include: Associated Natural Gas Company, City of Bernie, City of Clarence, City of Hermann, City of Kennett, City of Monroe, City of Montgomery, City of Paris, City of Perry, City of Perryville, City of Madison, Great River Gas Company, Kansas Power & Light, Missouri Public Service Company, Osage Natural Gas Company, and Union Electric Company.

MONTANA

The following companies in Montana purchase imported gas directly: Montana Power Co. and Rainbow Gas Co.

NEBRASKA

The following companies in Nebraska purchase imported gas directly: Aquila Energy Marketing and Unigas.

Nebraska is also served by the following interstate pipelines that include imported gas in their supply: Northern Natural Gas Company and Natural Gas Pipeline Company of America.

Their sales customers in Nebraska include: City of Lyons, City of Nebraska City, City of Ponca, City of Stromsburg, Fremont Department of Utilities, Iowa Public Service Company, KN Energy, Inc., Minnegasco, Inc., Omaha Municipal Utilities Department, People's Natural Gas—Utilicorp., Peoples Natural Gas Company, and Village of Pender.

NEVADA

The following companies in Nevada purchase imported gas directly: Paiute Pipeline, Sierra Pacific Power Co., and Southwest Gas Co.

NEW HAMPSHIRE

The following companies in New Hampshire purchase imported gas directly: Bay State Gas, EnergyNorth Natural Gas, Inc., Gas Service Inc., Granite State Transmission, and Manchester Gas Company.

New Hampshire is also served by the following interstate pipeline that includes imported gas in its supply: Tennessee Gas Pipeline Company.

Its sales customers in New Hampshire include: Energynorth Inc.

NEW JERSEY

The following companies in New Jersey purchase imported gas directly: Elizabethtown Gas Company, New Jersey Natural Gas, O&R Energy, and Public Service Electric and Gas Company.

New Jersey is also served by the following interstate pipelines that include imported gas in their supply: Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation.

Their sales customers in New Jersey include: Central Hudson Gas & Electricity Corp., Elizabethtown Gas Company, NJ Natural Gas Company, Orange & Rockland Utilities, Inc., and Public Service Electric and Gas Co.

NEW YORK

The following companies in New York purchase imported gas directly: Bishop Pipeline Co., The Brooklyn Union Gas Company, Central Hudson Gas and Electric Corporation, Citizens Gas Supply Corp., Consolidated Edison Company of New York, Direct Gas, Energy Marketing Exchange, Fulton Cogeneration Associates, Indeck Energy Services of Oswego, Indeck Energy Services, Indeck-Yerkes Energy Services, JMC-Selkirk Cogeneration, Long Island Lighting Company, National Fuel Gas Supply Co., New York State Electric and Gas Corporation, Santana Natural Gas, St. Lawrence Gas Company, Tenngasco Corp., TGC Fult, and Women's Natural Gas Corp.

New York is also served by the following interstate pipelines that include imported gas in their supply: Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation.

Their sales customers in New York include: The Brooklyn Union Gas Company, Con Edison Co. of NY, Inc., Consolidated Gas Transmission Corp., Long Island Lighting Company, National Fuel Gas Supply Corp., New York State Electric and Gas Corp., and Orange and Rockland Utilities Inc.

NORTH CAROLINA

The following company in North Carolina purchases imported gas directly: Public Service of North Carolina.

NORTH DAKOTA

The following companies in North Dakota purchase imported gas directly: Great Plains Natural Gas Co. and Northern States Power Co.

OHIO

Ohio is served by the following interstate pipelines that include imported gas in their supply: Panhandle Eastern Pipe Line Company, Tennessee Gas Pipeline Company, and Texas Eastern Transmission Corporation.

Their sales customers in Ohio include: Dayton Power & Light Company, East Ohio Gas Company, National Gas & Oil Corp., Northeast Ohio Natural Gas Corp., Ohio Gas Company, Oxford Natural Gas Company, and Pike Natural Gas Co.

OKLAHOMA

The following company in Oklahoma purchases imported gas directly: Enogex Services.

Oklahoma is also served by the following interstate pipelines that include imported gas in their supply: Natural Gas Pipeline Company of America, Northern Natural Gas Company, and Panhandle Eastern Pipe Line Company.

Their sales customers in Oklahoma include: Oklahoma Natural, Town of Corn, and Town of Hardesty.

OREGON

The following companies in Oregon purchase imported gas directly: American Fine Foods, Armstrong World Industries, Inc., Atochem, Boise Cascade Corporation, C.P. National Corp., Clermont Fruit Packers, Eagle Picher, ESCO Corporation, High Cascade Lumber, J.R. Simplot Co., Northwest Natural Gas Company, Northwest Pipeline, Oregon Steel Mills, Port of Portland, Portland General Electric Co., Portland VA Hospital, OR, Roseburg Lumber, Roseburg VA Hospital, OR, Simpson Paper, Smurfit Newsprint Corp., Westar Marketing Co., White City VA Hospital, OR, and Williams Gas Marketing.

Oregon is also served by the following interstate pipeline that includes imported gas in its supply: Northwest Pipeline Corporation.

Its sales customers in Oregon include: Cascade Natural Gas, CP National, and Northwest Natural Gas.

PENNSYLVANIA

The following company in Pennsylvania purchases imported gas directly: National Fuel Gas Supply Co.

Pennsylvania is also served by the following interstate pipelines that include imported gas in their supply: Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation.

Their sales customers in Pennsylvania include: Allied Gas Company, Carnegie Natural Gas Company, Chambersburg Gas Dept., CNG

Transmission Corporation, Equitrans Inc., Honesdale Gas Co., National Fuel Gas Supply Corporation, North Penn Gas Co., Pennsylvania and Southern Gas Co., Pennsylvania Gas and Water Co., Philadelphia Electric Company, Philadelphia Gas Works, TW Phillips Gas & Oil Company, and UGI Corporation.

RHODE ISLAND

The following companies in Rhode Island purchase imported gas directly: Ocean State Power, Pawtucket Power Associates, and Valley Gas Co.

Rhode Island is also served by the following interstate pipeline that includes imported gas in its supply: Tennessee Gas Pipeline Company.

Its sales customers in Rhode Island include: Valley Gas Co.

SOUTH DAKOTA

South Dakota is served by the following interstate pipeline that includes imported gas in its supply: Tennessee Gas Pipeline Company.

Its sales customers in South Dakota include: City of Watertown Municipal Utilities, Iowa Public Service Company, Minnegasco, Inc., Northwestern Public Service Co., People's Natural Gas-Utilicorp., Peoples Natural Gas, and Watertown Municipal Utilities.

TENNESSEE

Tennessee is served by the following interstate pipeline that includes imported gas in its supply: Tennessee Gas Pipeline Company.

Its sales customers in Tennessee include: City of Collinwood, City of Bolivar, City of Clarksville, City of Hohenwald, City of Lafayette, City of Lawrenceburg, City of Lebanon, City of Linden, City of Lobelville, City of Loretto, City of Portland, City of Ridgetow Natural Gas, City of Savannah, City of Springfield, and City of Waynesboro.

East Tennessee Natural Gas Co., Greater Dickson Gas Authority, Hardeman-Fayette Utility District, Horton Highway Utility District, Humphreys County Utility District, Lexington Gas System, Midwestern Gas Transmission Co., Piedmont Natural Gas Company, Pulaski Natural Gas Dept., Smyrna Natural Gas System, Town of Adamsville, Town of Centerville, Town of Dickson, Town of Henderson, Town of Parsons, Town of Walnut, United Cities Gas Company, and West Tennessee Public Utility District.

TEXAS

Texas is served by the following interstate pipeline that includes imported gas in their supply: Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, and Tennessee Gas Pipeline Company.

Their sales customers in Texas include: American Central Gas, Anthem Energy, ARCO Gas and Oil Co., Arkansas Louisiana Gas Company, Cabot Gas Supply, Centran Corporation, Cibola Corporation, City of Gruver, City of Hemphill, City of Iraan, City of Kountze, City of Marietta, City of Rankin, City of Stinnet, City of Sunray Utilities, City of Woodville, Coastal Gas Market, Dolphin Energy, Eastex Hydrocarbons, Enron Gas Marketing, Enron Industrial, Entex, Inc., Gas Company of New Mexico, High Plains Natural, and LEDCO.

Lyle Energy Sources, Mercado Gas Services, Meridian Oil Trading, Midcon Marketing, Morse Utility Company, Natural Gas Clearinghouse, Nebraska Municipal, North Texas, Pacific Western Ener, Phoeniz Chemical, Picor, Producer's Utilities, PSI, Rangeline, Southern Union Gas, Southwest Gas Distributors Inc., Valgas, VHC Gas Systems, West Texas Gas Inc., West Texas Utilities, Westar, and Wheeler Gas Company.

UTAH

The following companies in Utah purchase imported gas directly: Grand Valley Gas Co. and Utah Gas Services.

Utah is also served by the following interstate pipeline that includes imported gas in its supply: Northwest Pipeline Corporation.

Its sales customers in Utah include: Utah Gas Service.

WASHINGTON

The following companies in Washington purchase imported gas directly: ARCO Products Company, Atlas Foundry, Ault Naval Base, Biomass, Boise Cascade Corp., Cascade Natural Gas Corporation, Centennial, Chevron Chemical, City of Ellensburg, WA, City of Enumclaw, WA, City of Long Beach, WA, Columbia Aluminum, Darigold Inc., Development Associates, Domtar Gypsum, Dyno Overlays, Inc., Earle M. Jorgenson Co., Georgia Pacific Corp., Grand Valley Gas Co., IGI Resources, and Inland Empire Paper.

Intalco Aluminum Corp., Intermountain Gas Co., J.H. Gypsum, James Hardy, James River Corp., Jorgenson Forge, Kimball Energy Corp., Kimball Resources, McCain, McCall Oil, Mock Resources, Mutual Materials Co., Nalley's Fine Foods, National Gas Resources, Northwest Natural Gas Co., and Occidental.

WEST VIRGINIA

West Virginia is served by the following interstate pipelines that include imported gas in their supply: Northern Natural Gas Company and Viking Gas Transmission Company.

Their sales customers in West Virginia include: Cabot Corp., Cumberland Gas Corp., and Utilicorp United Inc.

WISCONSIN

The following companies in Wisconsin purchase imported gas directly: Ampco Metals, Aquila Energy Marketing, Archer-Daniels-Midland Co., Associated Natural Gas, Badger Paper, Inland Steel Co., Kaztek Energy Mgmt, Kohler Company, Little Rapids Corporation, Northern States Power Co., Ore-Ida, Proctor and Gamble Co., State of Wisconsin, Tecumseh Products Company, Weyerhauser, Wisconsin Fuel and Light, Wisconsin Gas, Wisconsin Power & Light Company, Wisconsin Public Service Corporation, and Wisconsin Paper Board.

Wisconsin is also served by the following interstate pipelines that include imported gas in their supply: Northern Natural Gas Company and Viking Gas Transmission Company.

Their sales customers in Wisconsin include: Elroy Gas, Midwest Natural Gas, Natural Gas Utility of Viroqua, Natural Gas, Inc., Northern States Power Co. of W., Northern States Power Company, St. Croix Valley Natural Gas Company, Superior Water, Light & Power, Viroqua Natural Gas Utility, Wisconsin Gas Company, Wisconsin Power and Light Company, and Wisconsin Southern Gas Company.

PPG Industries, Inc., Seattle Rendering, Seattle Steam, Seattle VA Hospital, WA, Simpson Paper, Simpson Tacoma Kraft Co., Simpson Timber Company, Sonoco Products, Vanalco, Vancouver VA Hospital, WA, Walla VA Hospital, WA, Washington Natural Gas Company, Washington Water Power Co., Westar Marketing Co., Weyerhauser, Whitman College, Willamette, Williams Gas Marketing, and Zebec.

Washington is also served by the following interstate pipeline that includes imported gas in it supply: Northwest Pipeline Corporation.

Its sales customers in Washington include: Cascade Natural Gas, City of Buckley, City of Ellensburg, City of Enumclaw, Northwest Natural Gas, Washington Natural Gas, and Washington Water Power.

WYOMING

The following companies in Wyoming purchase imported gas directly: Wyoming Industrial Gas.

Wyoming is also served by the following interstate pipeline that includes imported gas in its supply: Northwest Pipeline Corporation.

Its sales customers in Wyoming include: Wyoming Industrial Gas.

VERMONT

The following company in Vermont purchases imported gas directly: Vermont Gas Systems.

INGAA,
April 23, 1991.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: This is to reconfirm INGAA's active opposition to the provisions of the Wirth/Domenici amendment to S. 341, which moved import/export authority from DOE to FERC and triggered mandatory FERC review of pipeline rate designs with respect to imported gas supplies. INGAA opposed the concepts in this amendment before the Committee's markup and will continue to push for their removal from the final legislation.

The existing policy for import and export authority is working well and should not be changed. We would be pleased to provide additional information for the record on this matter.

Sincerely,

JERRY HALVORSEN.

CONSUMERS' COUNSEL,
Columbus, OH, June 14, 1991.

Hon. MICHAEL OXLEY,
U.S. House of Representatives, Longworth House Office Building, Washington, DC.

DEAR CONGRESSMAN OXLEY: At the June 5, 1991 hearing on natural gas issues held by the Subcommittee on Energy and Power, at which I presented testimony on behalf of the National Association of State Utility Consumer Advocates (NASUCA), you raised some questions about the effect of a provision of S. 341 (now pending in the Senate as S. 1220). I would like to respond more fully on behalf of NASUCA and for the Ohio Office of the Consumers' Counsel (OCC).

As you know, we represent the concerns of small captive consumers of natural gas. OCC's jurisdiction is limited specifically to the interests of residential consumers. These consumers are those whom the Natural Gas Act of 1938, and other regulatory statutes, are intended to protect. They are also the customers who pay rates for firm service, whether sales or transportation, from interstate pipeline. The rate design changes which Senator Domenici advocated before you on June 5, and which would effectively be mandated by S. 1220 as it now stands, allow pipelines to recover all their fixed costs, as well as their return on equity, in a demand charge. This demand charge component of rates is billed and paid regardless of gas usage. While this rate design results in a lower rate for each additional unit of gas consumed, the full costs are still reflected in

consumers' bills. Moreover, firm service customers pay the majority of the demand charges. The effect is to shift the risk of a pipeline's operations to those consumers who are most dependent on the pipeline's service.

I hope this explains the basis for our opposition to the rate design shift advocated in S. 1220. As to whether the provision under discussion violates the Free Trade Agreement with Canada, NASUCA has not taken a position, as I stated in response to your question. OCC will review the issue, as you suggested.

Natural gas consumers in Ohio and elsewhere will be greatly affected by the results of your deliberations on these matters. We are pleased that you are devoting such thoughtful attention to them. If NASUCA or OCC can provide further information, please do not hesitate to contact us.

Very truly yours,

MARGARET ANN SAMUELS,
Federal Counsel, Ohio Office of Consumers' Counsel, Chair, NASUCA Gas Committee.

PEOPLES GAS SYSTEM, INC.,
Tampa, FL, February 5, 1992.

Hon. CONNIE MACK,
U.S. Senate,
Washington, DC.

DEAR SENATOR MACK: It is my understanding that the National Energy Security Act, S. 2166, will shortly be considered on the Senate floor. This bill contains provisions that, if enacted, would impose new restrictions on imports of natural gas.

Peoples Gas System opposes these provisions. We believe that there is an urgent need in Florida for large new power generation sources. In many instances, these cogeneration projects, including those to be served by our company, are fueled by natural gas, including natural gas imported from Canada. We believe that these projects should be free to choose among all available supply options, including imported gas supplies, without interference by anti-import restrictions that erect unnecessary barriers to the North American natural gas trade, violate the U.S.-Canada Free Trade Agreement and are viewed as inappropriate by more than 50 Senators.

We understand that Senators Bradley and Seymour may offer an amendment to strike these anti-import provisions from the Senate energy bill. I urge you to support their amendment.

We also understand that Senators Domenici and Wirth may offer substitute language as a second degree amendment to the strike amendment offered by Senators Bradley and Seymour. We believe that the alternate language that may be offered by Senators Domenici and Wirth has the same defects as the original provisions of S. 2166, and I urge you to vote against their amendment if offered.

Thank you very much for your attention to this matter.

Sincerely,

JOHN A. BRABSON, JR.,
Chairman, President & C.E.O.

Mr. JOHNSTON. Mr. President, this is a very important amendment. I congratulate Senators BRADLEY, WIRTH, DOMENICI, and all parties who have dealt with this, on working this out.

We hope when we get to the conference committee that all matters respecting Canadian gas, including that which is I think presently contained in the House bill, may be deleted so that this bill will, upon presentation to the President, be solid on this issue. That is our goal.

We support the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. WALLOP. I ask unanimous consent that I be added as a cosponsor.

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

Mr. JOHNSTON. And I.

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

Is there further debate on the amendment of the Senator from Wyoming? If not, the question is on agreeing to the amendment.

The amendment (No. 1577) was agreed to.

Mr. WALLOP. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1576 TO AMENDMENT NO. 1575

Mr. FOWLER. Mr. President, in offering this amendment today with my distinguished colleague from Florida, Mr. GRAHAM, I make no statement about either the utility or the desirability of nuclear power. I leave that to others in this debate or to another day.

But I join with Senator GRAHAM and others simply to try to discharge some fundamental, I believe, obligations to the American public.

The public is the individual, the States, and the nuclear energy. Part of that obligation is to ensure that in this particular instance no one interest dominates the other to the exclusion of the rights and responsibilities of the others.

Another is to make sure that the Nuclear Regulatory Commission has the tools it must have in order to discharge its obligations to that same public.

In its role of facilitating the operation of the atomic plants, the NRC is also under the charter of the guardian of the public's health and safety. Obviously, this body must go about fulfilling these responsibilities in a rational and understandable manner and once we have met these obligations, it seems to me, it must be clear on the very face of the legislation what rights, opportunities, and obligations we are attempting to codify.

The amendment sponsored by Senator GRAHAM and myself we hope strikes the necessary balance between these interests, and also strikes that balance coherently. It does set up a mechanism by which the NRC can improve the effectiveness and efficiency of the licensing procedures which is consistent with the protection of the public health and safety and with the right of responsible public participation in the process.

First, like S. 2166, the amendment authorizes the Nuclear Regulatory Commission to issue combined construction permit and operating licenses in order to streamline the licensing process.

This change, I might add parenthetically, has been sought by the nuclear industry for more than a decade, and I believe that in accommodating their desire, we must now build an infrastructure which recognizes our will as a society and our expectations as a democracy.

I think we all pretty much agree that we must not permit streamlining of the nuclear licensing process at the expense of the rights of interested States or of members of the public. This body cannot afford to even create the perception that the public's participation in nuclear licensing decisions is either expendable, undesirable, or unwelcome. There can never be any compromise or breach of the public's health and safety.

Another very important decision this body must make is once the Commission decides that a plant may go forward in operation, under what circumstances and through what process may the challenge be argued against operation, especially when new evidence becomes available?

I am going to try to separate these issues very carefully here because I hope that, by doing so, we get a very clear sense of how this amendment differs with the Johnston-Wallop proposal in some very fundamental key public policy areas.

First, I would like to address under what circumstances may the public challenge an NRC decision to allow a nuclear plant to operate?

Put another way: What must the public show in order to get through the door of the NRC to make their case?

Unlike the substitute, our amendment, that of Senator GRAHAM and myself, is absolutely clear on what the public must raise in order to raise a challenge of licensing or licensing of nuclear power.

The Graham-Fowler amendment goes one step further in that we let the public and interested States know precisely what its rights are once it meets certain threshold requirements in mounting the challenge.

Our proposal then informs the NRC what is must do when certain issues are raised in the manner outlined.

These areas of our proposal are clear, in my opinion. On the face of the amendment, we create no new obscure legal principles or standards. All parties involved—the Commission, the industry, and the public—know exactly what to expect during the combined li-

cense process, or would, under this amendment.

As long as the public meets the threshold standards set out in the amendment, the public has a right to an adjudicatory hearing on the record. It is just that simple, but it is also that fundamental.

Some have argued—and I respect the arguments—that the threshold standards we have explicitly set out are unnecessarily high for the public to meet in order to obtain a hearing.

As my colleague from Florida tried to explain a moment ago in a colloquy with the now Presiding Officer, the Senator from Minnesota, an awful lot of people wanted everything shut down as long as there was any public question or public inquiry. Senator GRAHAM and I happen to believe that that is unreasonable on its face. The plants are there. Plants can be built. Authority ought to be in the NRC to make them safe.

The authority ought to be unquestionably by Government oversight that if a challenge is made, they have the authority and the responsibility to inform the public as to whether or not they believe that challenge is frivolous. And we are willing—although there is great dispute and much criticism, and some will oppose this amendment, because we do not shut down the plant when the appropriate legitimate challenge is made. Some say that is irresponsible. But we believe that the legislative apparatus we have put in place here ought to create more certainty in this process; that legitimate, nonfrivolous claims will be heard. And we give the commission the flexibility of determining whether good cause exists for a hearing on these claims.

We set out in the statute what the NRC's obligations are, again allowing the Commission flexibility in discharging these obligations. We tell the public what it can expect once it has crossed a relatively high threshold of proof. Again, the public must cross that threshold, and once it does, then the NRC, under our amendment, must grant the adjudicatory hearing.

It seems to me that, with all due respect, and not by any sense deliberate, the "due process" under the committee amendment, adopted by the majority of the committee in S. 2166, is profoundly undemocratic, because the approach basically denies the public's right to due process through cross-examination and discovery, In fact, the language creates a presumption against due process. And this—in the words of our President on another issue—"cannot stand." It may be adopted, but legally—it is just one Senator's opinion—it cannot stand.

The public's right to due process, in any proceeding before an agency that its tax dollars created and now support, can no more be vitiated or held in abeyance by a presiding officer of the NRC than it can be by a President of the United States.

To go a step further, nobody underestimates the enormous task that the NRC has. Certainly, we must not tie the Commission's hands by trying to dictate under what circumstances, and only under those circumstances, it can allow a question to be asked by cross-examination or when it can require a document to be produced through discovery. That is absurd.

We must let the Commission do its job by giving it access to the tools that it needs when it is in the position of trying to get it through. Cross-examination and discovery are those tools of the law. Even traffic courts have to use them. You can see the absurdity of trying to deny them here.

I might add that, before the Johnston-Wallop proposal surfaced, the NRC, to my knowledge—and after as much research as I could find—never proposed to dispense with the public due process rights by eliminating cross-examination and discovery from its purview.

We cannot try to do it now, nor ever, for that matter, not as long as we have our democratic principles.

Along the same lines of due process, the public has the right to expect that any arbitrary or capricious decisions by the Commission in allowing the plant to operate or denying a postconstruction hearing will not stand. Again, that is why Senator GRAHAM and I try to make it clear that these decisions by the NRC are judicially reviewable. That is the court's obligation and responsibility in this process, and this body cannot take that away from the judiciary, no matter if we differ with its tendencies. The judiciary has an oversight function as well, and Senator GRAHAM and I respect that in this amendment.

We will not relegate the courts to simply reviewing petitions or other enforcement actions here. We provide for judicial review of NRC decisions, those allowing operation or denying the requests for postconstruction adjudicatory hearings. That is as it should be.

Mr. President, I conclude with where I really should have begun. The way we came to this discussion with the industry is the contention that public participation, through the hearing process, in nuclear licensing proceedings was somehow delaying the operation of these facilities. While this contention is advocated by many, and also vehemently disputed by many, Senator GRAHAM and I are trying to accommodate this concern by allowing the NRC to operate the plant, and, even further, to permit the plant to operate, and then operate pending the resolution of issues in dispute, so long as the Nuclear Regulatory Commission concludes that it is safe to do so.

This is the so-called interim operation provision. By offering this amendment, we meet head-on the argument that public hearings are creating unreasonable delays in the operation of safe nuclear facilities.

(Mr. BURDICK assumed the chair.)

Mr. FOWLER. As long as it is safe to do so, operation can begin even before the resolution of the issues in dispute.

But how else do we get in new evidence? What if you have an earthquake? What if bridges fall down? How is that question going to be raised?

With an aside and a metaphor that I hope will be worthy of the chairman of the Appropriations Committee and the President pro tempore [Mr. BYRD], all you have to do is look at the newspaper yesterday and go back 2,000 years. The extraordinary science developed by our satellite technology found the ancient city of Ubar—Iram of the Koran; Ubar of the Bible—home of the world-famous frankincense, and probably the site at which the three wise men sat down to bring gold, frankincense, and myrrh to the Baby Jesus.

This extraordinary technology in the sky that we have now, through almost invisible infrared science, can read 5, 10, 15 feet under the Earth—camel tracks and trading routes thought lost through hundreds and hundreds and hundreds of years.

The story of Ubar bears repeating to all who think they have built something that cannot break. Because Ubar, 2,500 years before Christ was born, was heralded as the finest city in all of the Asian Peninsula—eight towers were described, and the only place where water was found within 300 miles. All trade routes had to go through the town to get their water: The Jewel of the Ancient World.

Guess what happened? Our archaeologists, after following the satellite photographs of the camel trains and camel tracks, found that Ubar collapsed because the water supply that they built it over was in a limestone cavern. And unexpectedly, the perfect city, through the weight of its last tower, collapsed because the limestone cavern with its water supply could not support it.

Ever since that time and even before, whether it be the invention of the cotton gin by Eli Whitney, up to the most incredible technology, the proponents of that technology have said it is perfectly safe and it will not break. Whereas, anybody with any walking-around sense, no matter how much you are an adherent of sophisticated technology, knows it is impossible for man to construct with his hands something that cannot break.

Or, even if it is as safe as humanly possible, some natural cataclysmic event, be it an earthquake, the shifting of an aquifer, or the flooding of a river, can cause it to be made unsafe.

Nobody in this body and nobody out on the street will dispute that principle. It is just what is called walking-around sense.

All in the world that Senator GRAHAM and I are trying to do is to provide for the contingency that after the agency with the authority to ensure that nuclear plants are safe, after they have been given a permit to operate, after they are operational, if there is some new evidence that is not frivolous, there is a way for that evidence to be presented by the public who alleges that new evidence having to do with safety or health, that they can present that in a forum—I will use a nonlegal word—in a forum where responsible, due process procedures are followed, and where a court, if necessary, will have a responsible, legal due-process record from which to make the review, if a judicial review is necessary.

There are a lot of things I do not understand about public policy, and that is painfully obvious to my colleagues most of the time.

But I do not understand why anybody, looking at all of our fundamental responsibilities having to do with the technology of nuclear powerplants, would not say that this is the most reasonable, rational approach to trying to protect the public interest and to allow those who believe in nuclear power to build without any undue delay or hindrance.

The policy lines between our amendment and that of my distinguished chairman are very clear. Everybody here has had the opportunity to be heard and be on the record. I am saying that that, in and of itself, is more than the public would be allowed for the construction of nuclear powerplants under the Wallop-Johnston proposal.

We will vote on these two approaches. The record will be made, and when the bell tolls, it will be left to the judgment of the public we serve as to whether or not we have done our jobs; and that, too, is as it should be.

I thank the chairman.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from Louisiana [Mr. JOHNSTON].

Mr. JOHNSTON. Mr. President, as I heard the very eloquent and interesting Senator from Georgia talk about the ancient city of the Middle East and how it sank, or at least how its towers sank down through the limestone, killing its water supply, and that it died as a city, I thought he was saying that as a predicate for the potential demise of the United States, engulfed in greenhouse gases, with the warming effect that they present.

And I was thinking, perhaps, that he had been persuaded that at least we ought to consider a way to avoid generating further greenhouse gases.

Mr. President, in my view, the seriousness of people who talk about greenhouse gases is measured by whether or not they admit of the nuclear option. And if they do not, then I would dismiss, at least, all of their talk about the need to avoid global warming. If they will not even admit of the option for nuclear power, then I would say they are not very serious about global warming.

Because, Mr. President, all of these other means of producing energy, whether it is natural gas, which is the cleanest, produces a lot of CO_2, some SO_2, and a reduced amount of NO_x. You go up from there, with all fossil fuels and all of the other ways of producing energy.

Mr. President, nuclear power ought to be allowed, at lest as an option.

The issue presented here is a very, very clear one. It is whether or not we should require the Nuclear Regulatory Commission, after going through all of these hoops, after going through years and years of public hearings, whether they shall then be required to hold adjudicatory hearings—one of these monster trials, which again is illustrated by the chart. This is what a public hearing consists of and that is why it takes 22 months in the case of an early site permit, 18 months in the question of design certification, and 22 months with your combined license, just in the hearing. That is why it has taken 49 months on the average, prior to part 52, and that is why it outlaws nuclear power as a potential source if you are going to permit that uncertainty.

Mr. President, as the NRC says, part 52 adequately protects the public for any new information. It works well. It worked well in Yankee Rowe just within the last few months when a hearing was brought on, an informal hearing, which resulted in the plant being shut down.

Mr. President, we have now been on this issue for 2½ hours. I do not want to cut anybody off. I am, therefore, ready to make a motion to table.

Mr. President, I will withhold that motion at this point.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Wyoming [Mr. SIMPSON].

Mr. SIMPSON. I thank the Chair.

Mr. President, this comprehensive energy bill, by its nature, addresses all means of generating electricity, including nuclear energy.

The nuclear reactor licensing title falls in the jurisdiction of the subcommittee on which I have served for 13 years—I have been involved in the subject.

Today, as we consider the shape this country's energy policy will take, we must consider all the energy resources which we have in our own country, including nuclear energy.

Our domestic resources, all of them, should be fairly and equitably evaluated as we plan for this country's energy future.

NEED FOR NEW ELECTRICITY GENERATING CAPACITY

One of the most significant challenges facing the United States during this decade will be to assure reliable and affordable supplies of electricity to sustain economic growth and prosperity for our citizens and to preserve our competitive position in the world economy.

The direct correlation between economic growth and electricity demand growth has been well documented.

Building new electric capacity must be achieved in the context of assuring protection of public health and the environment. And we will do that.

Nuclear energy is receiving a second look from many corners for a number of reasons:

First, the need to develop secure, domestic energy sources to lessen our dependence on foreign oil;

Second, the need for new electricity generating plants, as reserve margins decline and are seriously low in various regions of the country;

Third, the environmental advantages of nuclear energy which does not contribute to air pollution or acid rain; and

Fourth, in recent years, the dramatic improvement in nuclear powerplant performance nationwide.

The administration's national energy strategy determined that the need for electricity is such that utilities must have additional baseload capacity ready to generate electricity just after the turn of the century. In order to meet that demand utilities must begin planning for this needed capacity now.

Not many people realize that 20 percent of this country's electricity is generated by nuclear power plants. These plants have been operating for many years, near almost every major city—pumping out clean electricity every single day.

NEED FOR LICENSING REFORM

To ensure the safety of all citizens while realizing the contribution from safe nuclear power, we must proceed with reform of the lengthy and cumbersome process by which nuclear plants are licensed.

The former licensing process was very unpredictable and created levels of uncertainty and financial risk, which utilities and investors today are still unable to accept.

By streamlining the licensing process, coupled with early site selection and standardized nuclear plant designs, much of this uncertainty will be eliminated—while preserving the public's ability to participate, in a meaningful way, early in the process.

Unfortunately, some have unfairly characterized the provisions of this bill as an effort to eliminate public participation.

The fact is that the licensing reform provisions considered enhance public participation by allowing more timely and meaningful involvement in the licensing process.

For example, the provisions require the resolution of all safety issues be-

fore plant construction begins, and provide for multiple opportunities for the public to raise new issues.

This is in addition to stringent testing criteria to ensure that the plant is built in accordance with the license which the Nuclear Regulatory Commission issues.

There is great debate regarding the opportunity intervenors may, or may not, have for public hearings under the provisions of this bill and even under the NRC's regulation found at 10 CFR part 52.

Under the previous licensing scheme—the two-step process which we are all too familiar with—the opportunity for a public hearing occurred after completion of construction.

That process had the potential of indefinitely delaying the operation of the plant. It is easy to understand why investors today have refused to accept such a risk of financial exposure.

What is of great concern to me is intervening strictly for the purpose of frustrating the process and causing delay.

Many unfounded criticisms have been levied that the public is precluded under the provisions of this bill from participation in the process.

However, the public now would have the opportunity early in the process to participate in all aspects relating to safety of nuclear plant design certification, plant siting, construction, and operation including emergency planning.

There are some critics of this proposal who claim that the process shuts out the public and thereby jeopardizes the public's health and safety, despite the fact that there have been many opportunities for public comment early in the process.

I think the public's participation is most constructive at the early stages of planning. In fact, under the old licensing process, one of the major criticisms was that the opportunity for public comment occurred late in the process—now critics are turning that old argument around saying they are precluded from participation at the end of the process.

THE STREAMLINED PROCESS ALLOWS FOR EARLY PUBLIC PARTICIPATION

The early site permitting process allows for a public hearing to resolve site-related issues. This is important because it allows any potential problems with the site to be discussed in the public arena before the site is permanently selected and the large capital commitment for construction is made.

Additionally, during the design certification process, an informal rulemaking allowing for public notice and comment will take place. This process will address all key safety issues regarding the plant design.

It is at this time that all necessary safety information concerning a plant's design will be available for review and comment by the public.

When a utility applies for a combined license—the construction permit and the operation license—another public is hearing is held.

This is meant to be a full adjudicatory hearing with full rights of discovery, and cross-examination which address other issues, including emergency planning.

Full public participation in the combined licensing process allows for the identification and resolution of issues which were not considered in the site-selection or design-certification process.

The combined license will include the acceptance criteria, and all necessary inspections, tests and analyses which will be used to ensure that the plant will be constructed and operated such as the public health and safety is protected.

Yes, I believe it is crucial to provide a more stable and predictable environment, for all interested parties, by securing legislation for a reformed licensing process.

Such statutory language is preferable to administrative rulemaking which is subject to potential revision.

INVESTOR NEED FOR PREDICTABILITY IN THE LICENSING PROCESS

In a letter received from the investment banking firm of Morgan Stanley & Co., they stated what it would take to stimulate investment in nuclear plants—and it is reasonable—predictability.

In streamlining the nuclear licensing process, a principal concern to investors is the elimination of any unnecessary or redundant postconstruction hearings which may block or delay safe plant operations.

To allow a postconstruction adjudicatory hearing without a requirement that the challenger meet a high threshold of proof of unsafe plant operation is inadequate.

The potential investment risks resulting from lengthy hearing and procedural delays will be so great—as they have been in the past—that investors will be unwilling to provide the necessary capital for the construction of new nuclear plants.

Fairness and rational judgment dictates that once licensing decisions are made that they not be subject to a hearing process of unlimited scope or duration after the plant has been built.

Postlicensing safety issues and new information should be resolved in the same way that these issues are currently addressed for operating plants—as a petition to modify the license.

Mr. President, I have been listening to some of the debate. I have been involved in this area as long as the Senator from Louisiana and the Senator from Wyoming, my lovely friend and colleague of many years. This is really an extraordinary departure from what we have been working for over many years. I am very disappointed to see the second-degree amendment to even come forward. It puzzles me, because what we have been trying to do is to avoid plant operation delays caused by the extraordinary prowess of those who hate nuclear power, those who would just continue to frustrate the process and do it in. I am not a nuclear power advocate, spokesman, 100-percenter. I fail that test. I have as much heartburn with those who say "Hell, no, we won't glow" as those who say nobody has ever been killed.

So we try to guide an appropriate fair and balanced process here. And I commend the Senator from Louisiana and the Senator from Wyoming for their work. What we are attempting to do is something that most of the citizens of America think should be done. Under the first-degree amendment, the public will have multiple opportunities for comment, but at some point there must be finality in the licensing process.

I do not understand what the purpose of this second-degree amendment is. This is an aberration at this point in time, and it does not fit. The NRC's sole function in life is to protect the public health and safety. They have no other function. None. The Commission finally went to work to do the things they should have done for years, and they have with part 52. You have had an alert Congress.

I happen to have served on the Subcommittee on Nuclear Regulation since I came here when Senator Gary Hart was chairman. I then chaired it. Senator BREAUX then chaired it. And we all worked closely together. Senator GRAHAM chairs it now, and I serve as his ranking member. We have talked about the need for licensing legislation. And I thought we were working toward the same goal, which I see was not to be. I understand how this happened.

If we could have pressed forward then I think we could have had some good results. What Mr. GRAHAM's second-degree amendment does is throw us right back to where we were before part 52 was promulgated, which is absurd. You should guarantee the combined construction permit operating license and as we have in part 52. In part 52, we have the early site permit process. I do not want to go into detail on that process. The chairman has explained it beautifully. It has a public hearing to resolve site-related issues. That is critical. It allows any potential problems with the site to be discussed in the public arena.

No one is trying to hide anything from the public. If anyone is still talking on that basis, they are misguided in this process. Even the representative of the Union of Concerned Scientists at the Nuclear Regulation Subcommittee hearing just a few days ago said, "I think we are getting close." I would think he would have said that because at every point in time there is public participation.

Additionally, during the design certification process, an informal rulemaking would allow for public notice and comment to take place. This process will address all key safety issues regarding the plant design. It is at this time that all necessary safety information concerning a plant's design will be available for review and comment by the public. And that is what we are interested in, resolving such issues before money is invested in construction.

When a utility applies for a combined license, that is the construction permit and operation license, another public hearing is held. That is meant to be a full adjudication, a hearing with full rights of discovery, and cross-examination, which addresses all other issues, including emergency planning. Emergency planning in the past has been something that the nemesis of several plants. That is when the local communities have said, "You can go forward with the plant if we just had a new bridge across the river." If we could do this, if we could do that. These issues now will be resolved before the plant is constructed.

The combined license will include the acceptance criteria, all necessary inspections, tests, and analysis, which will be used to ensure that the plant will be constructed and operated such that the public health and safety is protected. I firmly believe that it is absolutely crucial to provide a more stable and predictable environment for all interested parties by securing legislation for a reformed licensing process.

The Nuclear Regulatory Commission, I think, should inspire confidence. They have a fine group of Commissioners, and they have done what the public requires them to do, to protect them. We want to be careful that this process does not degenerate to what it was before where a plant costs $2, $3, or $4 billion, for no reason whatsoever except that an issue was raised after construction that should have been resolved before.

I do not think statutory language is preferable to the administrative rulemaking, which I think is subject to potential revision. But there is a need for predictability in the licensing process.

As I say, I have worked with the distinguished chairman of the Subcommittee on Nuclear Regulation, Senator GRAHAM, for nearly 2 years now. We have worked together on that subcommittee, held a number of very important hearings ranging from the adequacy of the electricity supply in the country to the safety of the Soviet-designed nuclear reactors around the world.

The major bulk of the work, however, has been to investigate the need for statutory action to codify nuclear licensing reform.

We have had several hearings, most recently—as I say—on January 23, several weeks ago. We have heard every single opinion. We have heard every single interpretation. We have heard every single reason for and against legislating licensing reform.

I have been attempting to work with Senator GRAHAM on a position on nuclear licensing reform as a substitute for the provision of the former S. 1220. We met on Tuesday of this week to agree in principle on at least some ideas and to pursue legislative language. Within hours of that meeting, the majority committee staff began to circulate a proposed substitute characterized as the Graham-NRC proposal.

And then it was described as the Simpson-NRC proposal. This was because it was introduced to our subcommittee by NRC's request in 1985. I can assure you it was not a Simpson proposal. And I can assure you it was not the NRC proposal. It was not.

And so by Wednesday morning, the amendment was formally circulated as the Graham-Fowler amendment, and a staff briefing was held.

I can assure you I do not say this with pain because I have plenty to do and am not seeking turf. I gave that up long ago. But I am talking about the reality of discussions in this area.

So, concurrently, I then felt I should go forward with some of the discussions which were underway on compromise language to S. 2166. So I and my staff, worked with Senators WALLOP, JOHNSTON, and BREAUX, my former chairman on the subcommittee, to fashion a compromise package of amendments as a substitute, which I believe will address some of the concerns raised by members of the Environment and Public Works Committee.

Specifically, the Johnston-Wallop-Simpson-Breaux compromise will improve on the language in S. 2166 in very significant ways. It will provide for judicial review of a final commission order to allow operation. It will replace the language in S. 2166, providing that the Commission shall satisfy itself with the language "shall find" which therefore provides an objective standard for commission determination.

In order for interim operation during the pendency of a hearing, the Commission will make a positive finding that the plant is safe to operate. That should address the concern expressed by some that a negative finding of no assurance of safety is inappropriate. And, postconstruction hearing procedures will be at the discretion of the NRC, either formal, adjudicatory hearings, or informal, but the Commission must state their reason for either choice.

So while I mentioned the phrase "formal, adjudicatory hearings," let me explain what that has meant in the context of the NRC. These have been full-blown Federal trial-type hearings, lasting for several years. And in cases, many years. They are highly confrontational and devoted primarily to lawyers and lawyers' arguments and those who hate nuclear power and those who love nuclear power.

All genuine issues of material fact require the same procedures for resolution with the result that enormous time and resources can be spent on relatively minor safety questions. In the past we have found more attention has been devoted to procedural issues, which have superseded all the substantive issues. This type of activity has been based on the theory that a reviewing court will scrutinize a procedural ruling more closely than a ruling on a substantive safety matter.

So here we are at this point—I hope not going to go back to the old two-step licensing process—the reason why we left the great white whales, like Shoreham, laying up there in New York with $5.2 billion of somebody's money down the rat hole. And that happened. That is the most egregious example of the bloated and twisted hearing process.

So here, finally, we are at a point in the life of nuclear energy in America where we have hearings, combined licenses, multiple opportunities for public comment and now suddenly going back to a procedure which is going to create great delay, great inflexibility and great disturbances within the investment community. Who will invest in new facilities under the second degree amendment? We have a Clean Air Act which is going to require us to go to nuclear energy, low-sulfur coal, and natural gas. And 20 percent of America's electricity is already generated by nuclear energy. The Senator from Florida represents a State that has nuclear power plants.

We have nuclear waste that we have not even dealt with, high-level spent fuel. We ought to have a hearing on that someday and talk about what we are going to do with 43,000 metric tons of stuff sitting under 26 feet of demineralized water all over the United States, while everybody is saying "not here," and "not in my backyard."

There are some realities to nuclear power and they have to do with getting it on stream, doing it in a sensible way, protecting the public. And the public is protected in the most extraordinary ways with this Johnston-Wallop compromise. Not only in this bill but in the regulatory process.

We can go forward here with this Johnston-Wallop compromise, to codify what we have been striving for predictability in the licensing rules. I think America will be the better for it, and I thank the chairman and the ranking member for their excellent work in this area.

The PRESIDING OFFICER. The Chair recognizes the Senator from Mississippi [Mr. COCHRAN].

Mr. COCHRAN. Mr. President, I support the nuclear licensing reforms that are contained in the committee bill

and I urge the Senate to reject the amendment offered by the Senators from Florida and Georgia.

Nuclear power technology has advanced significantly in the past decade. Safety systems have been developed for reactors that require little or no human intervention to shut down the reactor should any problems develop. These systems are not only safe, but their reliance on natural forces, such as gravity, to control their cooling systems, results in a significant reduction in the amount of pipe cables, valves, and pumps required in the plant. As a result, plants using these systems will be safer to operate and easier to maintain.

The newer plant designs will also be more conducive to standardization. All nuclear plants builds so far in the United States have been designed individually, which has required extensive oversight by the Nuclear Regulatory Commission. This has resulted in design changes and delays in construction that have added to the cost of constructing these plants.

In that environment, it was appropriate to have a licensing process that encouraged intrusive oversight. Although some opponents of nuclear energy have used this process to delay the operation of these plants, the process itself has generally served the public well by allowing significant citizen involvement in many of the issues related to the approval of the operation of these plants.

The process needs reform to meet the challenges of this new era. Any plants built in the United States today will use newer, safer technology as well as standardized plant designs, which will allow easier oversight for the Nuclear Regulatory Commission.

Still, public involvement should be encouraged. While there are environmental and economic benefits to nuclear energy, there is no benefit that exceeds the need for the safety of the public, and American citizens must be confident of that. The reforms provided in the bill would ensure that the public retains its role in the licensing process.

Under the provisions of the bill, the current two-step process of providing a construction license up-front, and an operating license following construction, would be consolidated into one license for both construction and operation. Because the plant design will be known before construction, questions relating to safety and emergency preparedness can be resolved in the beginning.

When construction is complete, an evaluation—including public involvement—will be made to ensure the plant was constructed in accordance with the plans that were agreed to at the time of the issuance of the license.

This new process will provide a more predictable course of events which will allow nuclear plants to be built in 5 to 6 years, as is common in other countries, compared to the 14 years it has taken the most recent plants to satisfy the licensing process in the United States.

I hope the Senate will support the licensing reform provisions in the bill, and I urge my colleagues to oppose the amendment offered by the Senators from Florida and Georgia.

The PRESIDING OFFICER. Is there further debate?

Mr. JOHNSTON. 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.

The PRESIDING OFFICER. The majority leader.

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

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

Mr. MITCHELL. Mr. President, the public is deeply concerned about the safety of nuclear power plants. Questions about the safety of construction and operation have plagued nuclear power since the first plant was built. Some argue that the public has needlessly delayed construction and operation.

However, my view is that the safety of nuclear power has been enhanced by the intense public scrutiny. The ability for meaningful and timely intervention by the public is one of the best mechanisms for assuring that public health and the environment are protected.

The Graham-Fowler amendment does not permit frivolous intervention or delay. One person could not, under this amendment, delay start-up of a completed nuclear power plant on a whim. Only those raising significant safety issues will be heard. But such persons are entitled to be heard on the record. Anything less shuts the door in the face of the American people.

Opponents argue that we cannot afford such intervention. I believe we cannot afford to be without it.

Shutting out the public by depriving them of a hearing before a plant begins operation sends the signal that those responsible for licensing, constructing and operating the facility somehow fear public scrutiny.

The Graham-Fowler amendment embraces early consideration of major issues. The emphasis is on providing thorough review from the beginning. Assuring that a plant is constructed and will operate consistent with NRC regulations and its license is essential.

The American people have a right to be heard. Safety cannot be compromised. I urge my colleagues to support the Graham-Fowler amendment.

I yield the floor.

Mr. KENNEDY. Mr. President, I give my strong support to the Graham-Fowler amendment on nuclear licensing. I am very concerned about the sweeping changes that the current bill would bring about in the licensing process for new nuclear power facilities.

In Massachusetts, we are well aware of the life-threatening risks to public health and safety associated with nuclear plants. At the Seabrook, Yankee Rowe, and Pilgrim plants, we have learned first hand the critical importance of citizen participation and scrutiny in safeguarding the public.

Most recently, the inspector general for the NRC has confirmed our suspicions that the NRC staff made significant misrepresentations to Congress on the integrity of the weld structure at Seabrook. This is just one example of conduct at the NRC that highlights the urgent and ongoing need for public oversight.

The current bill would severely restrict the opportunity for public input and make it recklessly easy to license new nuclear plants. Under this bill, it would be very difficult for citizens to obtain a hearing on new issues that may arise, such as emergency evacuation plans, new seismic or environmental data, or accidents that have occurred at similar plants.

The bill would also deprive citizens of access to documents that could reveal potential safety problems and give them the evidence to make a strong case that a new nuclear facility—at the critical stage before it begins operation—poses a threat to the health and safety of those who live in its shadow.

The one-stop-shopping approach to nuclear licensing makes a mockery of these profoundly important decisions for communities where these plants are located.

The nuclear lobbyists tell us that there will still be an opportunity for a public hearing on significant new issues before a plant begins operating. What they are referring to is a petition process that already exists, which has granted just 3 of 322 hearings requested over the last decade.

Senator GRAHAM and Senator FOWLER propose a sound alternative to these flawed licensing provisions. They would allow the NRC to streamline its licensing procedures and avoid drawn-out litigation over claims that are frivolous. However, they would not give the agency virtually unchecked authority to decide on its own whether an allegation has merit.

This amendment is a reasonable compromise that addresses legitimate concerns of the nuclear industry as well as the general public. The criteria it spells out for the NRC to use in evaluating claims of safety and construction deficiencies are the same criteria that the agency itself has developed, and that the NRC has been urging Congress to adopt for over a decade.

The public has every right to look closely at new nuclear plants and raise

questions that relate directly to the health and safety of their families.

In response to these criticisms, the managers have made some revisions in the new substitute they are offering. But their changes do not address the most important issue: How much discretion should the NRC have in deciding whether to take safety allegations seriously?

In Massachusetts, we have seen first hand that the NRC is reluctant to give adequate weight to allegations of safety problems and construction deficiencies, even when these are raised by inspectors who were under contract and who have technical expertise to recognize problems.

I urge the Senate to reject this substitute, and to support the sound and vitally important amendment offered by Senators GRAHAM and FOWLER.

Mr. SYMMS. Mr. President, nuclear power is a strategically important answer to our Nation's energy security needs. This is not only because of the uncertainty of our oil supplies, but also because of the clean nature of the technology and how critical that is to future environmental concerns. In fact, I believe nuclear power can be a technological savior for successful management of our planet's resources.

This is why safety and quality plant construction is so important to the nuclear power industry. Public and worker safety at all nuclear power plants is essential if we are to gain the public support and confidence needed to develop this technology for the future.

The Nuclear Regulatory Commission has provided strong leadership in establishing a safety-first approach to nuclear energy policy. The NRC rules for fitness for duty and drug testing, plant design standardization, and intergovernmental emergency planning have contributed to the ever-improving safety and performance achievements by the nuclear power industry over the past few years.

Management at most of the Nation's nuclear power plants continue to focus on and demand better safety. 1990 performance indicators for the industry demonstrate that U.S. commercial nuclear power plants are having few unplanned shutdowns, low incidence of worker radiation exposure, and are producing electricity more reliably than ever.

This amendment by Senator GRAHAM would unravel the combined licensing approach expressed by the NRC in their part 52 regulations. In my view, the realistic implementation of the amendment would force a return to the unpredictable two-step hearing process for construction and operation of a nuclear power plant.

There are many impressive advanced reactor designs ready to be submitted to NRC for approval. However, we should avoid new legislation or regulation that selects one technological approach, one nuclear reactor, or one company over another.

Standardization regulations and licensing reform should be initiated so that the NRC can get out from under political issues associated with the construction of new nuclear power plants. NRC should be able to put their stamp of approval on a plant design or license without being mired in lawsuits and procedures.

I urge my colleagues to defeat the Graham amendment and do all that we can to enact the Johnston-Wallop nuclear licensing reforms into law.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I think the issue is a very clear one. The issue is whether, after three permits have been issued, after years of public hearings, and after the plant is finally complete, whether in effect the antinuclear intervenors will be able to require a public hearing, a full adjudicatory trial which has taken, during the decade of the 1970's, an average of 49 months, whether we will allow that simply by showing a disputed issue of fact, all of which is appealable. Mr. President, somebody said, the Graham amendment is not strong enough. It is strong enough to kill nuclear power because with the possibility of those kinds of delays, no one will build a nuclear plant, no matter what the safety, no matter what the economics.

We must reject the Graham amendment and we must uphold the bill and then nuclear power can compete in the marketplace and also can show itself to be safe.

Mr. President, I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. For what purpose does the Senator rise?

Mr. GRAHAM. I rise to ask unanimous consent that in addition to the original cosponsors, Senators FOWLER, KENNEDY, BRYAN, REID, HARKIN, WELLSTONE, JEFFORDS, and MITCHELL be added as cosponsors of this amendment.

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

Mr. GRAHAM. Mr. President, to close on the amendment.

The PRESIDING OFFICER. If the Senator will withhold, the Senate is now, a motion to table having been made, in a nondebatable posture.

Mr. GRAHAM. Mr. President, I ask unanimous consent for 3 minutes to close on the amendment?

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. GRAHAM. Mr. President, the basic issue here is under which circumstances would a member of the public have the right to secure a full adjudicatory hearing on nuclear safety, if the issues are just frivolous or insignificant, or if they are issues that could have been raised earlier and which were willfully withheld, then no hearing would be granted. But if the issues were truly serious—if they met the test in our amendment—then a hearing would be granted. The amendment that we are about to vote on does not allow hearings on frivolous issues. The amendment says that in order for a petitioner to have a right for a full adjudicatory hearing, it has to be either an issue that was not and could not have been raised at a previous hearing, or that it is an issue that raises a question of nonconformance with the license that was issued in a previous hearing, which nonconformance has not been corrected and which nonconformance could materially and adversely affect the safe operation of the facility.

Mr. President, those are not frivolous standards that the petitioners would have to meet.

Beyond that, the petitioner would have to show that the disputed fact is substantial, necessary for the Commission's decision on the safety of the plant and that it could not be resolved with sufficient accuracy except at such a full adjudicatory hearing.

Mr. President, those are the standards that have to be met in order for a citizen, a representative of a State and local community to have a right for a full airing of a safety concern prior to the operation of a nuclear plant. And even beyond that, Mr. President, we have provided for interim operating authority if the NRC makes a judgment that in its opinion the plant is safe to operate while those issues are being resolved through the adjudicatory process.

I think that is an eminently reasonable position in terms of both the interests of the industry in stability in the permitting process, and the right of the public to have a proper hearing on issues of nuclear safety, public health, and the environment.

I do not believe that the industry serves its own interest well by a policy that says we should preclude the public from having this opportunity for full airing of disputes. This will diminish public confidence in the NRC and the nuclear industry. Nuclear power cannot survive without real openness and public confidence. I believe that, by adopting the proposal of the Senator from Louisiana, it would raise additional questions of suspicion, doubt about this industry that would disserve its potential to become a more significant part of America's energy future.

The PRESIDING OFFICER. The question is on agreeing to the motion to table amendment No. 1576 offered by the Senator from Florida [Mr. GRAHAM]. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. INOUYE (after having voted in the affirmative). On this vote I have a pair with the distinguished Senator from Iowa [Mr. HARKIN]. If he were present and voting, he would have voted "nay." If I were at liberty to vote, I would vote "yea." I withhold my vote.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN] and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

I also announce that the Senator from Michigan [Mr. RIEGLE] is absent because of family illness.

On this vote, the Senator from Hawaii [Mr. INOUYE] is paired with the Senator from Iowa [Mr. HARKIN].

If present and voting, the Senator from Iowa would vote "nay" and the Senator from Hawaii would vote "yea."

I further announce that if present and voting, the Senator from Michigan [Mr. RIEGLE] would vote "nay."

Mr. SIMPSON. I announce that the Senator from Arkansas [Mr. STEVENS] is necessarily absent.

The result was announced—yeas 52, nays 43, as follows:

The result was announced—yeas 52, nays 43, as follows:

[Rollcall Vote No. 20 Leg.]

YEAS—52

Bentsen	Exon	Pressler
Bingaman	Ford	Pryor
Bond	Garn	Roth
Bradley	Gorton	Rudman
Breaux	Gramm	Sanford
Brown	Hatch	Sasser
Bumpers	Heflin	Shelby
Burdick	Helms	Simpson
Burns	Hollings	Smith
Coats	Johnston	Specter
Cochran	Kassebaum	Symms
Conrad	Lott	Thurmond
Craig	Mack	Wallop
Danforth	McCain	Warner
DeConcini	McConnell	Wirth
Dodd	Murkowski	Wofford
Dole	Nickles	
Domenici	Nunn	

NAYS—43

Adams	Glenn	Metzenbaum
Akaka	Gore	Mikulski
Baucus	Graham	Mitchell
Biden	Grassley	Moynihan
Boren	Hatfield	Packwood
Bryan	Jeffords	Pell
Byrd	Kasten	Reid
Chafee	Kennedy	Robb
Cohen	Kerry	Rockefeller
Cranston	Kohl	Sarbanes
D'Amato	Lautenberg	Seymour
Daschle	Leahy	Simon
Dixon	Levin	Wellstone
Durenberger	Lieberman	
Fowler	Lugar	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Inouye, for

NOT VOTING—4

Harkin	Riegle	Stevens
Kerrey		

So the motion to lay on the table the amendment (No. 1576) was agreed to.

Mr. JOHNSTON. 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.

Mr. JOHNSTON. Mr. President, the Johnston-Wallop substitute makes four changes in the nuclear reactor licensing title of S. 2166.

The first change relates to judicial review. The substitute clarifies that a decision by the Nuclear Regulatory Commission to allow or prohibit a nuclear powerplant licensed under S. 2166 to begin operating is subject to judicial review.

NRC decisions authorizing plants to begin operating under the old two-step licensing process were expressly made reviewable under section 189b. of the Atomic Energy Act of 1954, but the act did not refer to decisions authorizing operation under the new licensing process established by S. 2166.

The NRC testified that such decisions would be judicially reviewable without further amendment to the Atomic Energy Act. Nonetheless, the substitute expressly provides for judicial review.

An NRC decision denying a petition for a hearing on significant new information issues, in accordance with the so-called section 2.206 process, would be reviewable in the course of a review of the decision authorizing operation.

The second change relates to the safety finding. The substitute clarifies that the NRC must find that a nuclear powerplant meets safety requirements before the plant can begin operating.

Under the substitute, as under section 9102 of S. 2166 and the NRC's existing rule, the NRC would make this finding by determining that all of the prescribed inspections, tests, and analyses prescribed in the combined license are performed and that the acceptance criteria are met. The NRC would not be required to hold a hearing to make this determination.

Under section 9102 of S. 2166, the NRC is required to satisfy itself that the plant is safe before allowing it to operate. Many Senators thought that "satisfy itself" created a lower threshold than requiring a "finding" would, even though the NRC testified that it sees "no meaningful distinction between 'finding' and 'satisfying itself'."

The third change relates to interim operation. The substitute clarifies the circumstances under which the NRC may allow a nuclear powerplant to begin operating even though the NRC has decided to hold a hearing on a question of whether the plant was built in conformance with all the requirements of its license. The substitute permits the NRC to exercise this authority only after the Commission determines that the plant is safe to operate during the interim period.

The authority to allow interim operation is limited. It could be used where, although a petitioner has raised a question about the long-term safety of the plant and the NRC has decided a hearing on the issue is warranted, the NRC is able to determine that the plant is safe to operate during an interim period. This could occur, for example, where the safety problem will not occur for several years or where mitigating measures can be taken to avoid the problem during a period of interim operation.

The fourth change relates to hearing procedures. The substitute gives the NRC the discretion to tailor the procedures used in any preoperational hearing under S. 2166. The NRC may choose either informal or formal adjudicatory procedures but must state its reasons for its choice. The substitute changes neither current law or NRC practice with respect to other hearings.

The existing Atomic Energy Act does not require the NRC to hold its hearings on the record—the magic words the courts look for in determining whether formal, trial-type hearings are required. In 1962, the Joint Committee on Atomic Energy, in report language accompanying an amendment to the Atomic Energy Act's hearing provision, said that informal hearings were not only permissible but preferable. Nonetheless, the courts have not ruled on the issue, calling it an open question, and the NRC has traditionally afforded formal trialtype hearings in reactor licensing cases.

The substitute simply states that, in the case of preoperational hearings on plants holding a combined license under the provisions of S. 2166, it is up to the NRC to decide whether it can best resolve the issues before it through informal hearings or whether discovery, cross-examination, or other trial-type procedures are necessary. While the matter is left to the NRC's discretion, it must provide an explanation of its choice, stating the reasons therefor.

Again, though, the substitute does not affect the nature of hearings on site permit proceedings, design certification proceedings, or proceedings for the issuance of a combined construction and operating license.

Mr. SANFORD. Mr. President, allow me to make a brief statement of explanation regarding my vote to maintain the chairman's language amending title IX of S. 2166.

I expressed my serious concerns about the nuclear licensing title which originally emerged from the Energy Committee. Particularly, the discretion given to the Nuclear Regulatory Commission with regard to whether or not to grant a postconstruction hearing was disturbing. Certainly, the public's opportunity for judicial review should not have been eliminated from this process.

I feel that it is important to have some final check on the NRC and, accordingly, I supported an amendment to provide judicial review. This amendment provided that any final order allowing or prohibiting a facility to

begin operating under a combined construction and operating license shall be subject to such judicial review.

I believe this amendment will protect the public in a thorough and orderly manner.

Mr. JOHNSTON. Mr. President, now the underlying question is the Johnston-Wallop-Breaux-Simpson amendment, on which I am advised that the leaders on the other side—Senator GRAMM, et cetera—do not desire a record vote; and we do not desire a record vote on it.

I wonder if anybody else does. If not, I think we can adopt it at this point on a voice vote.

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

The amendment (No. 1575) was agreed to.

Mr. JOHNSTON. 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.

Mr. JOHNSTON. Mr. President, I believe that consideration of those two amendments fairly well disposes of the nuclear issues. There could or could not be other amendments, but I think it is safe to say that the Graham amendment was the major amendment on the nuclear issue.

I believe we have disposed of the major amendments with respect to alternative fuels. With respect to PUHCA reform, Public Utility Holding Company Act reform, we do not know at this point of any major amendment that would be required. We are not foreclosing anyone, but I state for the RECORD at this point that we do not know of any major amendments.

So, Mr. President, all amendments are important, but we have a large number of fairly work-a-day amendments. If we push on this bill, we believe we can get perhaps all of these amendments dealt with tonight, and if Senators will promptly tell us if their amendment will be offered and will give us an opportunity to work those out, at some point tonight, I would like to find out if we can limit amendments. We have our list here.

But we would like to push very hard to get this bill through tonight and tomorrow morning, because every day that goes by—yesterday, we attracted 20 new amendments. So that means for every day of delays, you can count on 20 new amendments, and that means many more days to consider this.

So my advice to Senators is that we are going to push as hard as we can to go into the night and get the major provisions of this bill dealt with.

I wonder if we are ready to consider any amendments at this point. I ask Senators to please contact us as to whether they have plans to bring up the amendments on the list.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. 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.

AMENDMENT NO. 1578

Mr. JOHNSTON. Mr. President, 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 Louisiana [Mr. JOHNSTON] for Mr. BENTSEN (for himself, Mr. JOHNSTON, Mr. SIMPSON, Mr. WALLOP, Mr. CRAIG, Mr. BOREN, and Mr. BREAUX), proposes an amendment numbered 1578.

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

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

The amendment is as follows:

At the appropriate place in the bill, add the following new sections:

SECTION . AMENDMENT TO TITLE 11 OF THE UNITED STATES CODE.

Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "or" at the end,

(2) in paragraph (2) by striking the period at the end and inserting "; or", and

(3) by adding at the end the following:

"(3) any interest of a debtor in or to liquid or gaseous hydrocarbons which the debtor has transferred or has agreed to transfer through or by a written farmout agreement, or any written agreement directly related thereto.

The trustees' rights, created in sections 365 and 544(a)(3), shall not operate to cancel or otherwise limit the effect of paragraph (3). For purposes of this subsection, the term 'farmout agreement' is a written agreement (A) in which the owner, of the rights to drill, produce or operate liquid or gaseous hydrocarbons on property agrees or is obligated to transfer or assign all or a portion of those rights to another party and (B) in which the other party, its agents or assignees, as consideration, agrees to perform drilling, reworking, recompleting, testing or other similar or related operations to develop or produce liquid or gaseous hydrocarbons on the property. In determining if a farmout agreement exists, the courts shall look to the custom and practices within the oil and gas industry for guidance. This subsection shall not operate to exclude from the debtor's estate the consideration which the debtor retains, receives, or will receive in exchange for transferring its interest in liquid or gaseous hydrocarbons.".

SEC. . EFFECTIVE DATE; APPLICATION OF AMENDMENT.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENT.—The amendment made by section 2 shall not apply with respect to any case commenced under title 11 of the United States Code before the date of the enactment of this Act.

Mr. JOHNSTON. Mr. President, this amendment is offered on behalf of Senators BENTSEN, SIMPSON, WALLOP, CRAIG, BOREN, BREAUX, and myself. The amendment seeks to remove an obstacle to oil and gas exploration in the Bankruptcy Code.

It is my understanding that the Judiciary Committee ordered reported the same provision, S. 580, this morning, and has no objection to its inclusion in S. 2166.

Mr. BENTSEN. Mr. President, I am pleased to join with my distinguished colleague Senator ALAN SIMPSON, in offering to S. 2166 an amendment which should help reverse the decline in exploration and development of domestic oil and gas reserves. The managers of the pending energy bill, the distinguished chairman and ranking member of the Committee on Energy and Natural Resources, Senators BENNETT JOHNSTON and MALCOLM WALLOP, have agreed to accept our amendment.

Our amendment would remove from the Bankruptcy Code an obstacle toward risking the large sums of capital and time necessary for oil and gas exploration. Just today, our bankruptcy legislation was approved and reported out by the Judiciary Committee. Our amendment is exactly the same as the reported legislation, S. 580.

Mr. President, the Persian Gulf conflict highlighted the decline in domestic exploration and development. The gulf conflict reminded us that the United States had become overly dependent on foreign oil. As we have consumed more foreign oil, we have abandoned intensive exploration and development of domestic reserves. Since 1986, exploratory drilling has fallen by 60 percent and production by 15 percent.

The number of independent producers has also fallen, a decrease which is particularly unfortunate because independents have historically drilled the majority of exploratory wells. Their numbers dropped from 13,000 in the early 1980's, to 5,000 by 1989. Those numbers are accompanied by a decline in geological surveys for reserves. Seismic crew counts declined by 75 percent over the last decade.

Mr. President, our amendment seeks to remove an obstacle toward risking the large sums of capital and time necessary for domestic exploration. That obstacle is section 541 of the Bankruptcy Code. Section 541 permits a bankruptcy trustee, for a bankrupt leaseholder, to extinguish the interest that an independent oil or gas operator contractually acquires in the wells he drills on a leasehold. This is an interest the leaseholder had contractually transferred to the operator, before the leaseholder's bankruptcy. Our measure amends 541 by excluding this interest from the bankruptcy estate.

This legislation therefore denies bankruptcy trustees the discretion to wipe out the efforts of independent operators who are working to make us more self-sufficient.

Our amendment recognizes and incorporates the industry custom and practice by which these oil and gas interests are transferred. They are typically transferred through contracts known as farmout agreements. Our amendment uses the term "farmout agreement" as a convenient and precise way of identifying which transfers should be excluded from section 541. The amendment defines farmout agreement and requires the agreement to be written, for the transferred interest to be excluded. The amendment also permits bankruptcy judges to refer to industry custom and practice, to decide if hybrid agreements fall within this exclusion.

Generally, a farmout agreement is one in which the owner of a valid oil or gas lease permits an independent operator to explore and then develop the lease, all at the operator's sole expense and risk. A typical agreement provides that if the operator strikes oil, it will pay the leaseholder a royalty which is a percentage from well proceeds. In exchange, the operator acquires an interest in the oil rights and keeps the balance of well proceeds.

Excluding these interests has two practical effects. The first is that a bankruptcy trustee can no longer unilaterally stop drilling, after the operator has invested considerable time and effort, but before he has struck oil or a dry hole. Section 365 of the Bankruptcy Code enables the trustee to reject executory contracts. A farmout agreement is executory until the operator strikes oil or gas. But for our amendment, the trustee could reject the agreement, and stop drilling, up until a moment before the driller strikes a wet well.

The second effect of our amendment is that it permits the operator to keep whatever income or interest the leaseholder had contractually agreed the operator could earn from a wet well. But for the amendment, the bankruptcy trustee could use section 544(a)(3) to void the farmout agreement, even after the agreement is no longer executory. In other words, the trustee could stop drilling and the agreement, after the operator has struck oil or gas.

Under most farmout agreements, if drilling results in a dry hole, the operator is the only one who loses. The operator naturally does not acquire an interest in a dry hole. Chances are great that the operator will come up dry and lose his investment. More than 50 percent of wildcat wells are dry holes.

This failure rate is discouragement enough for exploration. This discouragement is compounded by the possibility that a bankruptcy trustee can stop exploration before its conclusion.

These multiple obstacles rebut the presumption that our legislation is an exception for some already fat-cat special interest group. Independents are mostly small business men and women who, under these circumstances, are innocent third parties in someone else's bankruptcy. Our legislation seeks to guarantee independents fair treatment under the bankruptcy laws and an even playing field in which they can survive and produce.

Our measure is balanced for another reason. It does not exclude what the leaseholder receives in return for having transferred development rights to the independent operator. Whatever the leaseholder receives stays in the bankruptcy estate. The measure, therefore, still gives the bankruptcy trustee full use of whatever consideration the operator continues to pay the leaseholder, under their farmout agreement.

This legislation should become a vital piece of a long-term comprehensive national energy policy that encourages environmentally responsible exploration and development of America's oil and gas resources. Before becoming forever dependent on foreign oil, we owe it to ourselves that we look for and find every last drop of oil that we can safely extract from our land.

And there is much to extract. The Energy Information Administration estimates that as of 1990, there were 16.5 billion barrels of proven crude oil reserves in the continental United States. The U.S. Geological Survey estimates another 33 billion barrels of yet unproven continental reserves.

The magnitude of those reserves tells me that now is not the time for independent operators to be retreating. To the contrary, they should be forging ahead. I hope our amendment will remove at least one obstacle along the road to self-sufficiency.

Mr. President, before I end my remarks, I must note that Senators from both sides of the aisle have joined Senator SIMPSON and me in this effort. Joining us as cosponsors are Senators BOREN, BREAUX, and CRAIG. The distinguished chairman, Senator JOHNSTON, and ranking member, Senator WALLOP, are also cosponsors.

Mr. President, I want to thank Chairman JOHNSTON and Senator WALLOP for accepting this amendment.

Mr. WALLOP. Mr. President, I join in cosponsoring this amendment because it will remove one obstacle to domestic oil and gas exploration. Today, with domestic crude oil production at its lowest level in nearly 30 years, and with exploratory drilling and seismic activities at all time lows, it is important to minimize unnecessary adverse impacts to the industry.

The effect of this amendment will be to prevent bankruptcy courts from extinguishing the rights of oil- and gas-producing companies to existing production when their predecessor in title goes bankrupt.

Farm-out agreements, where the producer obtains an interest in an oil and gas lease from the leaseholder in exchange for drilling wells and carrying out the actual production activity, have been increasingly at risk because of the downturn in domestic production coupled with workings of the Bankruptcy Code. This amendment remedies the situation by excluding from the estate of the bankrupt leaseholder any oil and gas interests that have been earned and that the debtor has obligated himself to transfer under a farmout agreement.

The entity that this amendment protects is not the one in bankruptcy, we are merely protecting the innocent from losing their legitimately earned property. Those are usually small oil- and gas-production companies called independents.

Mr. SIMPSON. Mr. President, I also want to thank my able friend and colleague from Wyoming, Senator MALCOLM WALLOP, and the very capable Senator BENNETT JOHNSTON, the managers of this bill for their accommodation. I also want to express my deep respect and admiration for my colleague from Texas, my friend Senator LLOYD BENTSEN, with whom I am proud to share the privilege of being the principal sponsor of this legislation.

Mr. President, I speak only briefly to address the points raised by a few of my colleagues.

An oil and gas farm-out agreement is a contract between an owner of the right to drill for oil, termed the "farmor," and a person or company that would like to drill for that oil, termed the "farmee." The farmee goes onto the land and drills for oil and gas at his own risk and expense. Once he establishes production in paying quantities, the contract requires that the farmor then—and only then—execute an assignment of the lease to the farmee. That assignment is a title document which, under the laws of the States, must be filed of record in the appropriate place.

Regardless of whether the assignment is recorded or not, some bankruptcy courts have been disregarding the validity of the assignment when the farmor later goes into bankruptcy. Those courts have been attaching the farmee's production in order to satisfy the debts of the farmor. Debts which the farmee had no role in incurring. That is just not right. And Mr. President, I am pleased to tell the Chair that just today, by a vote of 12 to 2, the Judiciary Committee agreed with the cosponsors of this legislation.

So, Mr. President, I sincerely thank the floor managers for their assistance and cooperation in accepting this amendment. This sensible piece of legislation will do much to cure a serious inequity in the law and will do much to give independent oil and gas producers some assurance that their hard work and investments will pay off.

Mr. GRASSLEY. Mr. President, Senator DECONCINI and I oppose this

amendment for quite a few reasons, but we would like to focus on three of the most important factors that make this amendment unwise and unnecessary.

First, oil and gas operators can already protect their interests under existing law. Section 544 of the bankruptcy code will wipe out the operators' interests only if the operators have not protected themselves through State law. Operators can protect themselves simply and cheaply. If they will only record their interest in real property at the county courthouse, then a trustee will not be able to wipe out that interest. All the concerns of the operators can be alleviated by that straightforward act.

Others in the oil industry, such as suppliers, drillers, and lenders record their interests in real property. Corporations in other industries and even single-family homeowners record their interests in real property. They do so to protect their interests, the same reason why oil and gas operators under farmouts should also record. Thus, the difficulties the operators complain about are not the result of the bankruptcy laws, but of their own refusal to act in the same fashion as every other prudent holder of real estate in this country.

Recordation is an available option. Any document can be recorded. There is no governmental prohibition on recording farm-out agreements. Those seeking this legislation may be somewhat inconvenienced by recordation, and may not wish to record. But they are allowed to record. And I challenge anyone asserting that farm-out agreements cannot be recorded to cite a single case or a single statute that prohibits their recordation.

A second reason to oppose this bill is its status as special interest legislation. The Bankruptcy Code is designed to provide an equal distribution of assets among all creditors. This bill undercuts that very valid purpose of the code. Other creditors of the debtor will have properly extended credit based on the apparent financial condition of the debtor, including its apparently unencumbered real estate. By excluding the operators' assets from the bankrupt estate, these other creditors are treated not equally, but disadvantageously, for reasons beyond their control, but not beyond the control of the operators. This result undercuts the intent of the code.

Finally, Senator HEFLIN and I have introduced a bankruptcy bill, S. 1985, which we expect that the Judiciary Committee will approve later this month. That bill will create a blue ribbon commission to review the operation of the bankruptcy laws. It would be better to have the commission evaluate the desirability of this proposal in light of the operation of the code as a whole. If it is in fact a sensible idea, I am sure that the commission will endorse its passage.

If the commission were to conclude that it should not be enacted, we would be making a serious error in passing this amendment.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DOLE. Mr. President, has leader time been reserved?

The PRESIDING OFFICER. Leader time has been reserved.

Mr. DOLE. Does the Senator from Louisiana have something else? I want to use my leader time.

Mr. JOHNSTON. The pending amendment was not yet agreed to, and we had another agreed-to amendment.

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

The amendment (No. 1578) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1579

(Purpose: To establish the Indian Energy Resource Development Commission)

Mr. JOHNSTON. Mr. President 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 Louisiana [Mr. JOHNSTON] (for himself, for Mr. INOUYE, Mr. MCCAIN, Mr. DOMENICI, and Mr. SIMON) proposes an amendment numbered 1579.

Mr. JOHNSTON. 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 401, after line 4, insert the following new title:

TITLE XVII—INDIAN ENERGY RESOURCE DEVELOPMENT COMMISSION

SECTION 17101. SHORT TITLE.

This title may be cited as the "Indian Energy Resource Development Commission Act of 1992".

SEC. 17102. ESTABLISHMENT.

There is established the Indian Energy Resources Development Commission (hereafter in this title referred to as the "Commission").

SEC. 17103. MEMBERSHIP OF THE COMMISSION.

(a) MEMBERSHIP.—

COMPOSITION.—The Commission shall consist of—

(1) 6 members appointed by the Secretary of the Interior from recommendations submitted by Indian tribal governments;

(2) 3 members appointed by the Secretary of the Interior from recommendations submitted by the Governors of States which have Indian reservations with energy resources;

(3) 9 members appointed by the Secretary of the Interior from private sector individuals with expertise in energy development, taxation of energy resources, or oil and gas royalty management, administration, auditing and accounting;

(4) the Secretary of the Interior, or his designee; and

(5) the Secretary of Energy, or his designee.

(b) APPOINTMENTS.—Members of the Commission shall be appointed not later than 60 days following the date of enactment of this title.

(c) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment was made. A vacancy in the Commission shall not affect the powers of the Commission.

(d) CHAIRPERSON.—The members of the Commission shall elect a Chairperson from among the members of the Commission.

(e) QUORUM.—Eleven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(f) ORGANIZATIONAL MEETING.—The Commission shall hold an organizational meeting to establish the rules and procedures of the Commission not later than 30 days after all members are first appointed to the Commission.

(g) COMPENSATION.—Each member of the Commission who is not an officer or employee of the United States shall be compensated at a rate established by the Commission not to exceed the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the actual performance of duties as a member of the Commission. Each member of the Commission who is an officer or employee of the United States shall receive no additional compensation.

(h) TRAVEL.—While away from their homes or regular places of business in the performance of duties for the Commission, all members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at a rate established by the Commission not to exceed the rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

SEC. 17104. COMMISSION STAFF.

(a) EXECUTIVE DIRECTOR.—The Commission shall appoint an Executive Director who shall be compensated at a rate established by the Commission not to exceed the rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) ADDITIONAL PERSONNEL.—With the approval of the Commission, the Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission. Such appointments shall be made in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, but at rates not to exceed the rate prescribed for level GS-15 of the General Schedule under section 5108 of such title.

(c) EXPERTS AND CONSULTANTS.—Subject to such rules as may be issued by the Commission, the Chairperson may procure temporary and intermittent services of experts and consultants to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $200 a day for individuals.

(d) PERSONNEL DETAIL AUTHORIZED.—Upon request of the Chairperson, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the

Commission in carrying out its duties under this title. Such detail shall be without interruption or loss of civil service status or privilege.

SEC. 17105. DUTIES OF THE COMMISSION.

The Commission shall—

(1) identify barriers or obstacles to the development of energy resources on Indian lands, and make recommendations designed to foster the development of energy resources on Indian lands and promote economic development;

(2) develop proposals to address the dual taxation of the extraction of mineral resources on Indian lands;

(3) develop proposals for the promotion of vertical integration of the development of energy resources on Indian lands;

(4) make recommendations

to improve the management, administration, accounting, and auditing of royalties associated with the production of oil and gas on Indian lands; and

(5) develop proposals on taxation incentives to foster the development of energy resources on Indian lands including but not limited to investment tax credits and enterprise zone credits.

SEC. 17106. POWERS OF THE COMMISSION.

(a) HEARINGS.—For the purpose of carrying out this title, the Commission may hold hearings, take testimony, and receive evidence at such times and places as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(b) ADMINISTRATIVE PROVISION.—Any member or employee of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) INFORMATION.—The Commission may secure directly from any Federal agency such information as may be necessary to enable the Commission to carry out this title. Upon request of the Chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

SEC. 17107. REPORT.

The Commission shall prepare and transmit a report to the President, the Speaker of the House of Representatives, the Select Committee on Indian Affairs of the Senate, and the Committee on Energy and Natural Resources of the Senate within 12 months after funding for the operation of the Commission has been secured. The report shall contain the recommendations and proposals outlined in section 17105.

SEC. 17108. DEFINITIONS OF "INDIAN LANDS".

For the purposes of this title, the term "Indian lands" means lands that are owned by an Indian tribe or Alaska Native corporation or held in trust by the United States for the benefit of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

SEC. 17109. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

SEC. 17110. TERMINATION.

The Commission shall terminate 30 days after submitting the final report required by section 17107.

Mr. JOHNSTON. Mr. President, this amendment, submitted on behalf of Senators INOUYE, MCCAIN, DOMENICI, and SIMON, has been cleared on both sides. It would establish an Indian Energy Resource Development Commission to study ways to foster the development of energy resources on Indian lands.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

The amendment (No. 1579) was agreed to.

Mr. JOHNSTON. 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. JOHNSTON. Mr. President, may I ask the distinguished minority leader how much leader time will be used at this point?

Mr. DOLE. I would like to have 10 minutes.

THE PRESIDENT'S HEALTH CARE PROPOSAL

Mr. DOLE. Mr. President, some of us have been saying for a long time that health care would be one of the top issues for 1992. I think we can count on that, now that President Bush has delivered on his promise to propose a major health care reform package.

The President's proposal demonstrates that we can address the access and cost concerns of all Americans without crippling our economy, and without putting our employers on the critical list, as the pay-or-play crowd would have it.

What the pay-or-play proponents do not seem to understand is that small businesses do want to provide health insurance to their employees. They just need a little help to do it. We can help low- and middle-income Americans buy insurance on the free market, as the President has proposed, or we can bury our businesses under a mountain of new mandates. Americans want affordable health care, but they shouldn't have to pay for it with their jobs.

It did not take the President's opponents long to offer their tablespoon of criticism. Some of these folks are running around today like they've just discovered the health care issue, and they're the only ones who can save us now. Well, the critics' rhetoric is nothing but a prescription for legislative gridlock.

If you ask me, the American people are sick and tired of congressional inaction, and ought to sue us for legislative malpractice if we cannot work on a bipartisan basis to reform American health care.

No doubt about it, we have our work cut out for us, and no one ever said the solutions would be easy.

But the President should be commended—not only for proposing a plan that addresses many of the deficiencies of our current delivery system, but for proposing a plan that preserves the many strengths that our health care system offers.

We all agree that $800 billion per year is too much to spend on health care delivery, particularly when so many still lack access to care.

We also agree that 37 million individuals without insurance is far too many.

By helping individuals purchase health insurance with tax credits, by curbing the explosive costs of medical malpractice, and by helping small businesses to provide coverage for their employees, President Bush has gone a long way toward addressing our health system's major problems.

And let us not forget that America is the medical miracle worker. We are living longer than ever before. We have defeated plagues; we have made medical advances that can save the life of even the smallest, frailest newborn; and we have learned how to make spare parts for nearly every body organ. The quality of health care that our professionals deliver is envied and admired world wide, and is second to none.

But there are problems, and the American people are demanding action. We owe it to them to work together, with the President, to provide all Americans with the quality, affordable health care they deserve.

I look forward to a vigorous debate in the weeks and months ahead. Let us hope it does not disintegrate into a political contest to see who can spend the most, talk the most and claim they care the most. We have already been through all that nonsense—it is time for some serious work, and some results for a change.

I yield the remainder of my time to the distinguished Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. DURENBERGER. Mr. President, I rise to thank the minority leader for his comment with regard to the President's health care proposal.

I have been serving now on the Finance Committee and Labor and Human Resources Committee for a long time and dealing with the health care area. For the last year and a half a lot of people on the other side of the aisle have been saying, "Where is the President? When are we going to hear from the President?" Now that we heard from the President, we are not only going to hear from him today in Cleveland, hear from him in Los Angeles and San Diego, we are sure going to hear from him for the next 5 years.

There has been some criticism that his plan does not go far enough, do enough, or control costs, and a variety of things like that. I am happy he has now become a player and think that is really important. I like the President's plan. It is a coverage plan. I must say

it is not a solution to all of the problems.

The real solutions to the health care crisis in this country entail a much broader articulation of the basic problem. But where the President starts is where everybody in this body has started—with insurance reform. The President has taken us a step farther. The affordability of coverage in this country is the issue, and the President's proposal makes sure that, if this is enacted, nobody in this country will have to risk the loss of their health insurance if they lose a job; nobody in this country has to risk the loss of health insurance because they have a medically uninsurable child in their family; nobody in this country is going to lose health insurance if, in fact, they lose their job or their business is sold out from under them.

So insurance reform, permitting small employers to group into large employers, that is the heart, that plus the administrative reform is the heart of it. We really want to get to it.

Why did he go to Cleveland? He went there because in Cleveland they are working on changing the practice of medicine. Someone once told me, and I believe it, that if all doctors and all hospitals in this country practiced medicine the way they do best, we could cut the cost by 35 percent in this country. The Cleveland Clinic does it. We just do not send enough business to them so they can prove what they do. But improving efficiency in that system, maintaining high quality is the only way you are going to do it. The President guarantees that that happens.

The third is putting the public back into public health. I think this is what you are going to hear the President talk about in the next day or so, taking responsibility, more information, prevention, wellness. We all agree with that; we just do not practice it.

Finally, making the health care markets work. There is no reason to go to Canada or Germany; there is no reason to leave America when we have demonstrably the best health care system in the world, the best technology, the best drugs, all invented in America. The access to it does cost too much. We need to stay here and fix this system and make it work for all Americans.

The President's proposal finally gets along the way to doing that. I welcome his proposal, and I challenge everybody in this body now to get together and find a nonpartisan way to deal with this problem that Americans have presented to us. And I am pleased to yield the remainder of my time to my colleague, the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, today President Bush has outlined a proposal to expand access to health care for all Americans. I applaud his effort in this area, and believe his proposal represents another important step toward enactment of health care reform.

It is essential that we significantly improve our health care system in the United States. Our costs are spiraling out of control, our health status—especially among children—is not improving, and too many Americans are without access to affordable and appropriate health care. As a veteran in this area, however, I know that it is much easier to make that statement than it is to gather a large enough consensus on how to solve the problem in one giant step.

Throughout the 1970's and 1980's, calls for comprehensive health care reform came in cycles. We all had proposals which we felt would solve the problem. Leaders dug their heels in and insisted that they had the best approach. We got nowhere. We are now in another such cycle. If history is a teacher, surely we can learn from our mistakes.

We have a real chance now, and I hope we won't let it slip through our fingers for political reasons. Many Republicans in the Senate agree; in the fall of 1991, 23 of us introduced a proposal, S. 1936, that we believe contains many provisions that have a chance of becoming law.

The proposal outlined by the President today also contains many provisions on which both Republicans and Democrats can agree. I am encouraged by the striking similarities between his proposal, the bill introduced by the Republican Health Care Task Force, the bill introduced by the chairman of the Finance Committee, and even the proposal introduced by the Senate Democratic leadership.

No proposal will pass without the agreement of a majority of Republicans, a majority of Democrats, and the President. The principles outlined by the President today make it very clear to me that we are not so far apart on a number of issues. We all agree that there are critical steps that can be taken to slow the rate of growth in our health care expenditures and to ensure that more Americans have health care coverage. What are these steps?

Insurance market reform;

Small group purchasing;

Community health center and national health service corps expansion;

Preemption of antimanaged care laws;

Preemption of State mandated benefit laws;

Changes in the Tax Code to address inequities, specifically allowing the self-employed and individuals purchasing health care to deduct either the full amount or some portion of the cost of their health insurance;

State experimentation;

Medical liability reform, and

Reduction in administrative costs.

Thus, it is certainly possible for us to move ahead in the near future with some significant positive steps to reform our system, and it is critical that we do so. I hope that neither party will allow the temptation of using this as a campaign issue to take priority over passing something that will at least move us closer to the goal of ensuring that all Americans have access to health care services.

Now, I do have some concerns about some details of the administration's proposal. For example, those of us who have advocated expansions and improvement in the delivery of services under the Medicaid Program over the past 6 years are uncomfortable with the thought of severely limiting Federal expenditures for low-income women and children. We have been leery of similar proposals in the past.

But the truth is that regardless of how we choose to reallocate our health care dollars—both private and public—paying for expanded access for the poor is going to be highly controversial. Financing a proposal will take just as much—if not more—bipartisan cooperation, as deciding how we will spend our money.

Now that the President has set forth a proposal, I call upon our Democratic colleagues to work with us to move forward in those areas on which we agree and to develop an approach to this critical problem that really can be enacted.

We cannot continue to stand by spouting rhetoric and let nothing happen. While we argue over what is best for the American public, some of our citizens, including too many children, are having to forgo needed services that would keep them healthier.

As we draw our ideological lines in the sand, Americans are suffering. Health care reform is too important an issue to sacrifice solid progress for potential gains in the polls. By sharing his proposal with the public today, the President has made it possible for us to move forward.

We can do something to help many Americans in the short term, and I urge those on the other side of the aisle to come to the table and work with us to enact significant health care reform legislation before the November elections.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

HEALTH CARE REFORM

Mr. BENTSEN. Mr. President, I want to say to my colleague, the distinguished Senator from Rhode Island, that I share his concern on this great issue and that I am pleased the President has taken part of our proposal.

The President has now engaged in the debate on health care reform and that is a very positive step, for without participation by the White House the debate would likely amount to little more than sound and fury.

The President has made some good short-term proposals and we will work with him on these. He has now finally recognized the problems Americans have in trying to get and keep affordable health insurance and the problems of skyrocketing health care costs across this country. For the long term, though, his proposal comes up short. Unfortunately, it sounds too much like his own description of a "take two aspirin and call me after the election" proposal.

Americans should not have to live in fear that if they lose their jobs, they will lose their health insurance; that if they or their children get sick, they will not be able to afford treatment; that if prices continue to careen out of control, they will not be able to afford the health insurance they need.

As a first step in combatting these problems, I introduced legislation last October with Senators DURENBERGER, MITCHELL, and 20 others to address a difficult, unfair situation and help millions of Americans set affordable health care insurance. Chairman ROSTENKOWSKI introduced similar legislation in the House.

This bipartisan legislation, the Better Access to Affordable Health Care Act, combats joblock by seeing to it that workers can keep their health insurance when they change jobs. We propose changing the law to give self-employed Americans a full, 100-percent tax deduction for health insurance premiums, and we encourage the formation of insurance pools in which small businesses can join together in seeking health insurance coverage.

I am advised that the President has incorporated these proposals in his plan. I commend him for that, look forward to working with him, but these provisions represent only a first step.

The President says that all Americans should have access to affordable insurance coverage. But in my judgment his proposal for comprehensive reform misses the mark.

For example, he is not targeting his solutions at the problem. Nearly 35 million Americans do not have health insurance, and the vast majority of them have jobs or live in families where someone works. There are serious questions about whether the President's plan would help them at all. A family of four making about half the poverty level—less than $7,000 this year—would qualify for a tax credit to buy guaranteed health insurance. Yet, according to the Congressional Budget Office, more than 70 percent of the uninsured have incomes above the poverty line and no such protections appear to be available to them.

I am also concerned that the President's plan will inadvertently encourage employers to shift health insurance costs to their employees or even stop paying for health insurance coverage because of the tax deduction that he would make available to employees.

The President has correctly emphasized the need for controlling the spiraling health care costs in this Nation. By the administration's own estimates, we will spend more than $800 billion on health care in 1992, or nearly 14 percent of our gross domestic product.

This cannot continue. But there is little in his proposal to address that problem.

In fact, the President's plan could make matters worse. The only serious attempts at cost control would hit Medicare and Medicaid, which represents just a portion of the health care sector. Individuals and companies who buy private insurance will end up paying more to compensate for the cuts in Medicare and Medicaid. With respect to Medicare, that is ironic because costs in this program have been growing at a slower rate than health care costs generally. Clamping down on the funding for Medicare and Medicaid, as the President proposes, could put about 50 million elderly and disabled, mothers and children at risk, unable to find a doctor who will treat them if payments are unreasonably low. For these vulnerable Americans, this could mean the very rationing of health care that the President is criticizing so strongly.

The President has now weighed in with a proposal of utmost importance to millions of Americans. But will it do the job? I want to study his proposal in more depth, but I am skeptical at this point. Despite his optimistic forecast, I am concerned that if his proposal is all that is enacted, we will look around 5 years from now and still have 30 million or more uninsured Americans.

The President has ducked the hard choices, offering only a pick-and-choose laundry list of possible Medicare and Medicaid cuts as ways to pay for his plan. That is precisely the kind of political gamesmanship we saw played throughout the 1980's, the kind that has caused the Federal deficit to skyrocket.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The manager of the bill, the Senator from Louisiana is recognized.

NATIONAL ENERGY SECURITY ACT

The Senate continued with the consideration of the bill.

AMENDMENT NOS. 1580 TO 1585, EN BLOC

Mr. JOHNSTON. I have six amendments which have been cleared which I will shortly send to the desk and ask unanimous consent for their consideration en bloc. Mr. President, the amendments are as follows: An amendment by Senators LEVIN and COHEN, to increase the Federal Government's procurement of energy-efficient products; an amendment by Senator SYMMS to add wood-burning heating appliances to a list of authorized measures under the low-income weatherization program; and amendment by Senator WELLSTONE, to require the National Academy of Sciences to conduct a study examining past and current subsidies; an amemdment by Senator GLENN, to amend the alternative-fueled fleets provision by clarifying requirements for the Postal Service fleet; an amendment by Senator MCCAIN to add solar-powered vehicles to the list of alternative-fueled vehicles; and a sixth amendment by Senator WIRTH to provide for the verification of demand-side management savings.

Mr. President, I now send those amendments to the desk and ask unanimous consent for their consideration en bloc.

The PRESIDING OFFICER. Is there objection to the request to have these amendments considered en bloc?

Without objection the request is granted.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes amendments numbered 1580 to 1585 en bloc.

Mr. JOHNSTON. Mr. President, the amendments have been fully described. I believe those amendments are cleared on both sides.

The PRESIDING OFFICER. Is there any discussion?

Mr. WALLOP. Mr. President, they are cleared on this side.

Add at the end of subtitle B of title VI:

SEC. . Whenever the Federal Government establishes a new requirement or initiates a new procurement for the acquisition of electric lamps, electric ballasts, electric motors and/or refrigeration equipment, the Federal Government shall, where cost effective, give preference to the procurement of the most energy efficient products available to meet its needs. The General Services Administration shall keep a record of the quantity, country of manufacture, and cost of items purchased under this subsection. The Secretary of Energy shall estimate the quantity and cost of energy saved annually due to this subsection.

Mr. COHEN. Mr. President, the amendment that Senator LEVIN and I have offered focuses attention on the Federal Government's widespread inattention to energy efficiency in its procurement processes. This issue was examined by the full Governmental Affairs Committee last May, and again by the Oversight of Government Management Subcommittee in November.

The Federal Government is the Nation's single largest energy consumer, and despite the enactment of laws requiring reductions in energy consumption at Federal facilities, energy use by the Federal Government has actually increased. It is entirely appropriate, Mr. President, to expect that Federal agencies should lead the way in procurement of energy efficient products, so that the private sector will follow its example.

Experience has shown us that the Federal Government's procurement

policies have a tremendous impact on the market for specific products at many levels. Through these hearings, the Governmental Affairs Committee sought to discover how responsive the Federal Government is to innovative technologies, and how small businessmen can participate in the process by bringing their ideas to the appropriate Federal officials.

At both hearings, we heard striking testimony from people who had tried unsuccessfully to participate in various Government agencies' contracting system, some for several years. I am particularly pleased that this amendment requires that the Federal Government give preference to energy-efficient refrigeration equipment. In addition to being good for the country, this will be good news to Jim LaBreque of Bangor, whose situation I discussed during both hearings.

Jim LaBreque owns a company, MEPSCO, which has developed a prefabricated refrigeration system that is energy efficient and uses substitutes to CFC's—the pollutant that is destroying the ozone layer. MEPSCO thought this product would be of interest to the Department of Defense for its many commissionaries.

This product is already in use at several grocery stores—A&P in New Jersey, Waldbaum's in New York, and several smaller stores in Maine. The A&P is so excited about the $6,000 a month the equipment has saved them in energy costs that it has ordered two more units.

Unfortunately, the DOD was not as interested in the $6,000 savings. Instead, responses MEPSCO received from the Air Force and the Navy did not express much of an interest in removing the apparent obstacles that prevent them from considering MEPSCO's product in the bidding process.

Mr. President, it simply makes no sense that the A&P in New Jersey should find it easier to reduce its energy consumption with MEPSCO's product than the Federal Government. It is clearly time for Federal agencies to take the lead in procurement of energy-efficient products, rather than continuing to fall behind. This amendment will take us a step further toward that goal, and I urge its adoption by the Senate.

Mr. LEVIN. Mr. President, I am offering an amendment to improve the Federal Government's record on the procurement of energy-efficient products, specifically electric lighting, electric motors, and refrigeration equipment.

The Federal Government encompasses about 500,000 buildings and over 3 billion square feet. Every year the Federal Government spends about $1 billion or 25 percent of its total energy expenditures to light these buildings and facilities. Unfortunately, approximately $250 million of that money is wasted.

Conservative estimates by the Office of Technology Assessment and the Batelle-Pacific Northwest Laboratory indicate that by conducting an aggressive relighting campaign, the costs would be recaptured within 2 to 3 years and the savings would flow. Although the President has issued an Executive order mandating reductions in overall Federal energy use, I am concerned that the historical lack of emphasis on energy conservation will repeat itself and inertia will once again set in.

Mr. President, the possibility of savings cannot be ignored any longer. Energy conservation is not an idea whose time has come; it is an idea whose time is long overdue. The private sector has been saving billions by switching over to cost-effective, energy-saving lights and motors.

It is unfortunate that the administration has only just begun to take advantage of the numerous new energy and cost-efficient technologies that are available. But with this amendment, we are going to speed that process along and hopefully recoup some of the billions of dollars that have been wasted over the last decade. The amendment requires the Federal Government to give a procurement preference to certain energy-efficient products which are not now being purchased as aggressively as they could be.

On a related point, Mr. President. I am pleased that the managers of the bill have accepted several amendments proposed by Senator GLENN, myself, and other cosponsors of S. 1040. With the changes made by these amendments, the Federal energy management program will run smoother and taxpayers will achieve a real return on their tax dollars spent to improve Federal energy efficiency.

Mr. President, I also ask unanimous consent that a staff memorandum from the Office of Technology Assessment on opportunities for replacing incandescent bulbs in Federal facilities with compact fluorescents be included in the RECORD following the amendment.

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

OTA ENERGY AND MATERIALS PROGRAM—STAFF MEMORANDUM

Date: February 1, 1992.
To: John H. Gibbons
From: Robin Roy
Subject: Opportunities for Compact Fluorescent Lamps in Federal Facilities[1]

Substituting energy efficient compact fluorescent (CF) lamps for ordinary incandescent bulbs is one approach for profitably improving Federal energy efficiency and reducing Federal spending. CF lamps have been commercially available for several years, with tens of millions now in use in the private sector. This memorandum provides an overview of Federal efforts and opportunities regarding CF lamps.[1]

Footnotes at end of article.

FEDERAL EFFORTS PROMOTING COMPACT FLUORESCENT LAMPS

Federal facilities have purchased relatively few compact fluorescent lamps to date, although procurement has begun to increase rapidly. The Defense Logistics Agency (DLA) is the Federal agency responsible for wholesale distribution of lighting products.[2] Though the end of fiscal year (FY) 1991, Federal facilities had purchased few of the one model of CF lamp offered through DLA.[3] Activity has increased greatly in FY 1992 with over 20,000 CF lamps procured as of January 24.[4] However, CF lamp procurement remains a small fraction of the millions of incandescent lamps purchased by Federal facilities each year.

Some CF lamps have been purchased by Federal facilities directly from vendors rather than through DLA and Federal Supply System (FSS) channels. While the number of CF lamps purchased in this way is not known, there was apparently too little interest to justify including more models in the DLA supply system before FY 1992.

Beginning in FY 1992, the Defense Logistics Agency greatly expanded its support of Federal facilities considering use of compact fluorescent lamps as well as other efficient lighting products. DLA now offers several models of compact fluorescent lamps rather than the single model available before October 1991. DLA's CF lamp selection includes units to replace incandescent lamps in the range of 25 to 100 watts, and models which can operate in temperatures as low as 0° F (and are thus suitable for outdoor use in fairly cold climates).

To help familiarize Federal facility personnel with energy efficient lighting opportunities, DLA has established a toll-free telephone hotline to answer questions about energy saving lamps.[5] DLA is also distributing a special catalog called Energy Saver Bulbs, produced by the Defense General Supply Center and the General Services Administration's Public Building Service.[6] The catalog is intended as a simple to use tool for promoting energy efficient lamp use. DLA plans to update the catalog in early 1992, with additional compact fluorescent lamps and other products such as high efficiency electronic ballasts.

The U.S. Department of Energy, Office of Federal Energy Management Programs (FEMP) is attempting to develop an accurate estimate of CF lamp potential. To date, FEMP has received a preliminary report from its lead contractor, Pacific Northwest Laboratory (PNL). FEMP and PNL declined to provide OTA with that preliminary analysis, with PNL noting that the estimates may be "off by orders of magnitude," and thus could be misleading. PNL is preparing a more detailed analysis for FEMP. PNL anticipates providing a draft of this report to FEMP in February 1992, with a completed report to follow some months later.

AN ESTIMATE OF OPPORTUNITIES FOR CF LAMP USE IN FEDERAL FACILITIES

Although the precise number is highly uncertain, CFs could readily and profitably replace on the order of several hundred thousand to several million incandescent lamps now in use in Federal facilities. There is no accurate data for several key factors including: the total number of incandescent fixtures in Federal facilities; the number of those fixtures with a size and shape to accommodate a CF lamp; and the fraction of time those lamps are turned on, which determines the economic attractiveness. Accurate estimates are difficult to produce given the

high degree of diversity in Federal buildings nationwide and among agencies.

The highly approximate estimate made here is based on extrapolation from a study of one major military base performed by the Pacific Northwest Laboratory (PNL).[7] That study, based on the limited information available, made a simplified estimate of the number of incandescent lamps which are attractive candidates for replacement in various residential and nonresidential buildings. An estimate of approximately 2 CF replacements per 1000 square feet of nonresidential buildings and 3 CF replacements per 1000 square feet of residential buildings can be derived from the information contained in the PNL report. Throughout the United States, the Federal government owns about 700 million square feet of housing and 2075 million square feet of nonresidential building space in 1988.[8] Combining the relatively accurate square footage data with the very approximate estimate of CF potential per unit area yields the estimate that about 6 million CF lamps could be replaced. Again, it is important to note that many of the assumptions behind this estimate are highly uncertain.

The annual energy cost savings for each CF lamp replacement depends on the number of hours the lamp is used, which varies greatly between fixtures. For example, replacing a 75 watt incandescent with a 20 watt CF in an office where the lights are on 12 hours daily, 5 days per week throughout the year would reduce electricity use by about 170 kwh/year. Using the Federal government's average cost of electricity of $0.0574/kwh,[9] the annual energy cost savings would be $9.76.[10] However, a lamp in a closet or other infrequently used space may be turned on for only a few minutes daily. For a in use only ten minutes daily, the energy cost savings which result from a switch to a CF lamp would be less than twenty cents per year. Given that an incandescent lamp purchased through the DLA may cost less than 30 cents while a CF may cost over ten dollars, the payback on the initial investment in the closet CF would take decades (even neglecting interest costs).[11] Thus, for infrequently used lamps, economics favor the use of incandescents over compact fluorescents.

PNL's study of Fort Lewis estimated that the average replacement CF lamp saved about 115 kwh/year, representing between five and six hours use daily on average. Using the government's average cost of electricity nationwide, that's worth about $6.60 per replacement annually in energy cost savings. DLA currently supplies 20 watt CF lamps complete with screw in adapter and ballast which substitute for 75 watt incandescent lamps for a price of $13.16 each.[12] Based on an expected life of 10,000 hours, the CF lamp would continue to function for nearly 5 years, well beyond the two year simple payback on the initial investment. Of course, actual payback for a particular lamp replacement depends on factors such as frequency of use and electricity price at the facility.

By virtue of its size, the Department of Defense has the largest opportunity for CF use. DoD occupies and controls over two-thirds of the building space in the Federal government. Thus DoD facilities probably have about two-thirds of the opportunities for CF use. There are differences between the building stock of DoD and other agencies which could alter this estimate somewhat. For example, unlike the other Federal agencies, much of DoD's building space is residential, which has a higher fraction of incandescent lighting than nonresidential buildings. However, nonresidential lamps may be used more frequently than lamps in residences making them more attractive replacement candidates.

Although there are probably hundreds of thousands or millions of attractive opportunities for use of CF lamps in Federal facilities, not all (or even most) incandescent lamps are suitable for replacement. For example, PNL's study of energy efficiency opportunities at Fort Lewis assumed that only about 40% of incandescent fixtures were attractive candidates for CF lamps (15% and 100% of interior and exterior residential fixtures respectively, and 75% of nonresidential fixtures). In addition to poor economic feasibility in infrequently used fixtures, CF lamps have some important technical constraints. Neglecting the technical limitations of CFs can result in disappointing performance.

One critical limitation of compact fluorescent lamps is their size. Because CF lamps are larger and heavier than incandescent lamps, they do not fit in many fixtures. Another challenge is the limited light output of CF lamps. Compact fluorescent lamps with light output to replace a 100 watt incandescent lamps have only recently become widely available and higher wattage lamps (e.g., 150 watt) are yet to come. Also CF lamps available today cannot be used in dimming circuits nor can they provide the variable level of light available from 3-way lamps (e.g., 50–100–150 watt incandescents). As another example, although some CF lamps are rated to work at 0 degrees Fahrenheit, care must be taken to avoid specifying CF lamps rated only to 32 degrees Fahrenheit for use in moderately cold outdoor conditions.

Replacing selected incandescent lamps with CFs is only one of many commercially proven and available approaches which can profitably reduce Federal energy use and spending. As reported in Energy Efficiency in the Federal Government: Government by Good Example?[13], there are other lighting technologies that are available now but in limited use, such as occupancy sensors that turn off lights when not needed, and high efficiency lamps, ballasts, and fixtures of all types. There are also many measures for other energy uses such as carefully operating and maintaining heating, ventilating and air conditioning equipment, often with the aid of energy management and control systems.

THE OVERALL MARKET FOR COMPACT FLUORESCENT LAMPS

Total shipments of compact fluorescent lamps in the United States are large and growing. A survey of CF lamps manufacturers conducted for the Electric Power Research Institute show that annual shipments of CF lamps are growing rapidly, with about 25 million units supplied in 1991.[14] Manufacturers plan to expand capacity rapidly in the coming years, reaching over 70 million units in 1995. This, it appears that a major shift in Federal lamp procurement to CFs where practical and profitable, while having a definite impact, would not greatly alter the supply/demand balance. For example, even if several million CF lamps (the high end of our estimate) were procured by the Federal government over the next few years that would represent less than 10 percent of just the planned CF production capacity additions between 1990 and 1993.

Despite growing CF sales, traditional incandescent lamps continue to dominate total U.S. lamp sales. In the first half of 1991, the annual rate of shipments of general white incandescent lamps between 15 and 150 watts was over 800 million.[15] Compact fluorescent shipments totalled only about 3% of the market for general incandescents. However, actual CF use is higher than it appears based on that comparison since CF lamps last about ten times longer than incandescent lamps. Adjusting for their much longer lifetime, CFs apparently represented closer to 20% of the combined use of incandescent and CF lamps in 1991. With the industry's current plan to nearly triple production from 1991 levels by 1995, CFs could greatly erode the dominant position of incandescent lamps.

CF lamp technology has improved rapidly in the past several years, and continued improvements are expected. These improvements address the major limitations noted earlier. For example, integral CF lamps (i.e., screw-in integral lamp/ballast combination) producing the light equivalent of 100 watt incandescents became available in the last two years. Size and weight have also decreased and should continue to, making them more suitable in a greater number of fixtures. Improvements in the electronic ballasts used in CFs are anticipated that will provide features such as dimming ability. Further gains in energy efficiency are also likely.

FOOTNOTES

[1] While this memorandum draws on previous OTA work, it includes new material which has not received external review.

[2] Responsibility for wholesale distribution of lamps was transferred from the General Service Administration's Federal Supply System to DLA in December 1991.

[3] Personal communication with Defense General Supply Center account executive, January 14, 1992.

[4] Letter from Elizabeth Ackerman, Defense Logistics Agency, January 24, 1992.

[5] DLA's lamp hotline is 1-800/DLA-BULB [1-800/352-2852].

[6] *Energy Saver Bulbs*, [Defense General Supply Center Richmond, VA], October 1991.

[7] T.J. Secrest, *et. al.*, *Fort Lewis Electric Energy Baseline and Efficiency Resource Assessment*, PNL-7763, prepared for U.S. Department of Energy, Federal Energy Management Program, October 1991.

[8] U.S. General Services Administration, *Summary Report of Real Property Owned by the United States Throughout the World as of September 30, 1988*, 1989.

[9] U.S. Department of Energy, "Annual Report to Congress on Federal Government Energy Management and Conservation Programs Fiscal Year 1990," September 18, 1991, p. 21. Note that electricity prices to Federal facilities vary considerably in different parts of the country, and may depend on the size of the facility.

[10] In addition to energy cost savings, CF lamps also last about ten times longer than incandescent lamps (10,000 hours rather than 1,000 hours), reducing maintenance costs and saving the cost of replacement lamps.

[11] Although initial costs for CF lamps are high, many electric utilities will reimburse Federal facilities for part of their investment in energy efficient equipment including CF lamps.

[12] "DGSC Price List for Energy Saving Lamps," attachment to *Energy Saver Bulbs* catalog, October 1991. Note that DLA is currently reviewing the CF prices in its catalog based on contract prices paid to vendors. The contract prices are in many cases well below the DLA catalog prices, so the cost to Federal facilities may decline considerably. For example, the 20 watt CF has a catalog price of $13.16, but the vendor's contract price is only $7.48. Letter from Elizabeth Ackerman, Defense Logistics Agency, January 24, 1992.

[13] U.S. Congress, Office of Technology Assessment, *Energy Efficiency in the Federal Government: Government by Good Example?* OTA-E-492 (Washington, DC: U.S. Government Printing Office, May 1991).

[14] Lighting Research Institute and Plexus Research, Inc., "Survey and Forecast of Marketplace Supply and Demand for Energy-Efficient Lighting Products Phase I Report," prepared for Electric Power Research Institute, California Institute for Energy Efficiency, U.S. EPA-Global Change Division, U.S. DOE-Federal Energy Management Program, Review Draft, October 1991.

[15] U.S. Department of Commerce, Bureau of the Census, "Current Industrial Reports Electric Lamps," September 1991.

AMENDMENT NO. 1581

(Purpose: To add wood-burning heating appliances to the list of authorized measures under the Low Income Weatherization program)

On page 176, after line 22, insert the following new section:

SEC. . Use of wood-burning heating appliances for Low Income Weatherization.

Section 412(9) of the Energy Conservation and Production Act (42 U.S.C. 6862(9)) is amended by inserting the following new clause and relettering accordingly:

"( ) wood-heating appliances".

Mr. SYMMS. Mr. President, this amendment creates new authority for the Low-Income Energy Assistance Program to provide incentives to replace and modernize wood stoves and other wood-burning appliances. This legislation gives the Secretary of Health and Human Services 2 years to issue guidelines for States in implementing programs to encourage replacement of less efficient wood-heating appliances.

Although this amendment creates a formal consultation process with the Secretary of Energy, I would urge the Secretary of Health and Human Services to also consult informally with the Administrator of the Environmental Protection Agency. EPA has approved certain standards that all new wood stoves must meet. These phase II wood stoves use less fuel and burn cleaner than old models.

The program established in this amendment is very similar to a wood stove modernization provision included in the Senate's version of the 1990 Clean Air Act amendments. Because the clean air conferees decided to accept title I of the House version, this Senate wood stove provision was dropped.

This was a disappointing decision, but this energy bill presents another opportunity for Congress to create a program that will help States offer grants and loans to encourage the upgrading of wood-burning appliances for lower income Americans.

There are three major benefits to this voluntary program. New wood-burning appliances use about one-third of the fuel, dramatically reduce emissions, and provide more heat than do older wood stoves. By helping low-income households to buy these more efficient and cleaner wood-burning heaters, we will be helping our forests while improving air quality and keeping low-income families warmer during winter months.

Such a program could help improve air quality in my home State and many other rural States where people have convenient access to wood fuel. It will also help low-income folks stay warm in the winter by helping them get rid of an older, inefficient wood stove that leaves their home cold and drafty. For these folks, a modern, efficient wood stove can often be essential to surviving harsh winters in remote areas. It could also reduce the demand for the unauthorized taking of wood from national forests in the West.

In Idaho, a major reason for air quality problems is particulate coming from wood stoves. Wood stove particulate is the No. 1 contributor to air pollution in Boise and is a significant contributor in Lewiston, Pocatello, Coeur d'Alene, and many other Idaho cities. My amendment will help solve this problem by getting new wood-burning heaters to low-income families.

This amendment authorizes guidelines for States that will help low-income households replace wood-burning appliances. These State programs will reduce demand for taking wood out of forests, will keep low-income families warmer in the winter, and will improve air quality. From discussions I remember during the Senate's consideration of the Clean Air Act amendments, many northern States could take advantage of a wood-burning appliance modernization program. I would encourage my colleagues in the Senate to again try to provide this incentive and support this amendment.

AMENDMENT NO. 1582

(Purpose: To require the National Academy of Sciences to conduct a study examining current and past energy subsidies)

On page 344, between lines 18 and 19, insert the following new section:

SEC. 13120. ENERGY SUBSIDY STUDY.

(a) IN GENERAL.—The Secretary shall contract with the National Academy of Sciences to conduct a study of energy subsidies that—

(1) are in effect on the date of enactment of this Act; or

(b) Not later than 18 months after the date of enactment of this Act, the Secretary shall transmit to the Congress, the results of such study to be accompanied by recommendations for legislation, if any.

(c) CONTENTS.—

(1) IN GENERAL.—The study shall identify and quantify the direct and indirect subsidies and other legal and institutional factors that influence decisions in the marketplace concerning fuels and energy technologies.

(2) TOPICS FOR EXAMINATION.—The study shall examine—

(A) fuel and technology choices that are—

(i) available on the date of enactment of this Act; or

(ii) reasonably foreseeable on the date of enactment of this Act;

(B) production subsidies for the extraction of raw materials;

(C) subsidies encouraging investment in large capital projects;

(D) indemnification;

(E) fuel cycle subsidies, including waste disposal;

(F) government research and development support; and

(G) other relevant incentives and disincentives.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $500,000 for each of fiscal years 1993 and 1994.

AMENDMENT NO. 1583

On page 23, line 20, amend section 4102 by adding after subsection (g) the new subsection (h) as follows:

"(i) Notwithstanding any other provision of this subtitle, the Postmaster General shall be exempt from the requirements of section 4102(b), 4102(c), and [4102(g), page 3, line 4, of the Glenn Amendment]."

On page 20, line 21, amend as a new subsection (C) as follows:

"(C) For the purposes of section 4108, 4109, and 4110, a 'covered person' shall include the Postmaster General."

Mr. GLENN. Mr. President, the amendments just considered address the use of alternative vehicles by the U.S. Postal Service.

The Postal Service has raised concerns that S. 2166 and one of the amendments I offered here previously regarding the Federal Alternative Fuels Vehicle Program places them in a position of reporting to DOE and GSA. The Postal Service objects to being placed in this position because of their independent status conferred by the postal reorganization of 1970.

These amendments recognize that independence. However, they still ensure that the Postal Service will comply with the procurement, management, and placement criteria that GSA, DOE, and other Federal agencies must abide by.

My amendments also allow the Postal Service to accept the credits available to private and State fleets under section 4108 of S. 2166. In addition, under this language, the Postal Service will not be required to refuel its alternative fuel vehicles at publicly available commercial facilities. I don't think anyone here wants to see postal vehicles queuing up at public gas stations.

I want to thank Senators JOHNSTON and WALLOP and their staffs for working with me to adopt these amendments.

AMENDMENT NO. 1584

(Purpose: To permit solar-powered vehicles to be used to meet the alternative fuel vehicles requirement for centrally fueled fleets)

On page 18, line 6, after "electricity" strike ";" and replace with "including electricity from solar energy;"

AMENDMENT NO. 1585

(Purpose: To provide for the verification of demand-side management energy savings)

On page 157, line 4, strike the period and insert the following: ": *Provided*, That such energy conservation, energy efficiency resources and other demand side management measures are appropriately monitored and evaluated.".

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendments (Nos. 1580 thru 1585) were agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, we are getting down to the final strokes of

this bill. There are still a lot of amendments that might be considered, but we hope and trust that they will not be considered. So let this notice go out to Senators, Mr. President, that we will shortly, if we do not get contacted by Senators to say that they have intentions to push forward with their amendment, that we will be seeking to get some kind of final list to bring this matter to a close.

So, in effect, let the word go out that we want to finish this bill tonight. It may be a very late night, especially if we get involved in a huge number of speeches. But I hope we can finish tonight.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. I thank the Chair.

HEALTH CARE REFORM—TIME FOR CONGRESS TO ACT

Mr. BOND. Mr. President, as my colleagues pointed out, the President has now come forward with a comprehensive health care plan. It is now time for Congress to get to work because I think we are clear from what our people have said to us back in our respective States.

From what I have heard, there are at least four major criteria that are necessary to satisfy the people of America.

No. 1, there must be affordable access to health care for everyone. As I have traveled across my State, I have heard from people who have lost their health insurance when they changed jobs, people who are struggling to make ends meet and do not know how they will be able to afford a higher health insurance premium, people who are seeing their insurance rates rise faster than their incomes, and people who simply cannot afford to see a doctor when they need to.

No. 2, a reform plan must maintain American's right, freely to choose their own doctor and hospital.

No. 3, an effective reform plan must have a fair system to cut costs.

And, No. 4, wasteful administrative costs must be eliminated. The U.S. health care system is plagued by highly burdensome, confusing paperwork and billions of dollars of waste from an inefficient and disjointed billing system. Even though half of Medicare billing is handled electronically, that other half which is handled by paperwork generates each year enough paper, if laid end to end, to circle the globe eight times.

The President today mentioned the importance of moving to an electronic system for health care. I want to address very briefly that particular point because in my State the average Missourian, and indeed the average American, finds it costs about $400 to $497 a year just for the administrative cost of health care. A study in the New England Journal of Medicine estimates that it adds up to between $96 billion and $120 billion a year.

The dollars are spent because it takes an army of people to read the confusing forms that each patient must fill out. They must go through the doctor's hands. They go to the insurance company. If they are incorrect they come back. If there are different kinds of coverage they go to other people. There is a confusing proliferation of unnecessary paperwork handling.

We could generate significant savings from an electronic paperless billing system. I have been discussing with my colleagues, and I will be discussing with the people in my State this coming week, I intend to introduce legislation to designate qualified health insurance plans when we get back, specifically to nail down the benefits we can achieve from an all-electronic system.

Qualified plans would have to meet minimum Federal guidelines, including participating in a new computerized paperless billing system. In addition to having the benefits of electronic billing, the qualified plans must include some basic consumer protection items that I think each one of us has heard about as he or she has talked with constituents back home.

No. 1, there must be guaranteed acceptance that you can get insurance.

No. 2, guaranteed renewability—no more of the occasionally fly-by-night insurance companies canceling a policy because somebody got sick. It used to be an old joke that a banker was one who lent money like he was lending an umbrella; when it starts to rain he takes the umbrella back.

Well, the joke is no longer funny when it applies to health insurance. The family which has suffered a very serious illness and finds its insurance canceled because some fly-by-night operator has been making money off of cheap premiums and canceling the policy when the costs go up is in a terrible state.

We also need to put limits on the exclusion of coverage for preexisting conditions. Under these qualified plans if you move from one qualified plan to another qualified plan you would not be cut off for a preexisting condition.

Finally, there would be a limit on out-of-pocket costs for deductibles and payments. In short, if you purchased a qualified plan for health insurance you would be assured of a quality product. Designating insurance plans as qualified plans, it would be administered by the State insurance agencies. But my proposal would create an independent Insurance Benefits Assessment Commission to oversee implementation of the plan. Once that plan would be in place, then all businesses and workers would want to purchase a qualified plan because the full 100-percent tax deduction would be limited to those qualified plans. It would be a 100-percent deduction, so we get rid of the unfair situation we have today where a farmer or self-employed worker only gets to deduct 25 percent of the cost of health care insurance.

Our country can get the same efficiencies that Canada has through computerization. We believe that this computerization and electronic billing, can save from $50 billion to $80 billion a year in paperwork costs for health care plans.

I believe that the insurance overhaul can cut costs significantly and provide these additional consumer protection benefits. And I daresay every one of my colleagues has had a number of complaints in each one of these areas. We can get the job done if we tie the full deductibility for health insurance costs to submitting a qualified plan.

In summary, I believe the President's plan has hit the basic needs of this country. He has a four-point plan that makes sure that everyone will have affordable access through a system of tax credits or certificates and expansion of the public programs for the poor. He does not take away the consumer's right to choose a doctor and a hospital. The President's plan has a package to cut costs and to do it without raising taxes or enacting Government cost control.

I believe the President is right on track when he says we must have electronic claims filing. This, to me, is the kind of plan we can begin to work on. The ball is now squarely in Congress' court, to enact health care reform.

We can score lots of points by criticizing each other's plans and saying that we do not like this part or that part of somebody else's plans. But I think the time has come where we can all work together because we hear the same voices and they are saying: Stop the practices that take away insurance, do something about the costs, but let us continue to have the choice and the quality that have become the hallmark of the American system.

Mr. President, I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

LEADERSHIP FOR HEALTH CARE REFORM

Mr. WOFFORD. Mr. President, after 3 years of vague promises and more than 2 months of renewed expectations, President Bush finally put his cards, or some of them, on the health care table today in Cleveland. We welcome him to the table, at long last. For 3 years that President's chair has been empty.

We cannot meet the challenge of reforming our Nation's health care system without leadership from the President of the United States. Unfortunately, the only thing the President seems ready to lead is an attack against any fundamental reform of our health care system.

That is too bad. Because the enemy he describes as national health insurance is largely imagined, while our real enemies—skyrocketing cost, declining access, and endless wasteful paperwork in a maze of different, confusing programs—are a real part of our health care system as it exists today.

I am glad the Pennsylvania election served last November to convince the President to change his mind, to come forward with a health care plan before the November 1992 election; not to wait until afterwards. But the wake-up call did not convince him to stand up to the Nation's health care crisis with the same energy and commitment he showed when he confronted Saddam Hussein. Because the President's approach to this problem would, at the end of the battle, leave the status quo fundamentally intact. In fact, it might even make the situation worse by increasing the maze of bureaucracy without controlling costs.

The message I bring from the people of Pennsylvania is that when it comes to our current health care system, this will not stand. That message grows out of the harsh logic of the facts and the painful personal experience of almost every American. The great political force of this issue comes not from the tragic fact that some 37 million Americans cannot afford health insurance at all, but that millions more, a majority of the American people, fear that the rising costs of health care will bankrupt them or leave them unable to afford basic health care.

The approach finally outlined by the President in Cleveland a few hours ago does little more than tinker with our current system. It does not follow the facts to their logical conclusion. It will not turn the right to a doctor into a reality for all Americans. It does not address the fundamental problem facing us today: A health care system in which a stampede of forces, like a herd of cattle, are driving costs up at every level. But instead of building a single sturdy fence, the President seems to think he can lasso them one by one by providing vouchers or tax credits and letting the free market work its will.

But the Wall Street Journal itself declared on its front page just a few weeks ago that the laws of economics have been repealed in the health business. The market in health care is not working for the majority of the people.

The few actors within the health care market who have the power to control costs have little incentive to do so, and those who have every incentive to—the consumers and patients—have no power.

What Adam Smith wrote about the power of the invisible hand, he assumed, as they do at Symms, that an educated consumer is the best customer. But how can a patient decide if she needs an MRI screen to determine whether her chronic headache is a tumor?

The President's approach would not curb health spending. Instead of putting real teeth into cost control, the President suggests paying for his plan by taking a bite out of Medicaid and Medicare.

After a decade of such cuts for people who need those programs, it is unfair to ask our older citizens and those less fortunate to pay for the health care mess we are in.

As Pennsylvanians proved last November, the people are far ahead of this administration on this issue. They realize that other countries have universal systems which spend far less and provide high quality care by private doctors and private hospitals.

The President's threats of new taxes and Government bureaucracy do not strike much fear in the millions of families who are already struggling to cope with the complicated forms, the rising endless bills, and the hidden tax on wages and profits imposed by our present employer-based private health insurance system.

The President struck out last week with his economic plan. It was no strategy to get our economy moving again and out of this recession. He stepped into the batter's box today and struck out again with his inadequate health care proposal.

Before we say, "Three strikes and you are out," let us give him one more chance. Let us take his March 20 deadline that he gave for action on the economy and ask him to come back to the table with a serious health care plan that will control costs because we need his leadership, we need him to seize the day and not, as the Philadelphia Inquirer editorialized yesterday, propose the kind of ineffective piecemeal reforms we got in Cleveland.

Mr. President, just as the time once came when women finally won the right to vote, as the walls of segregation fell finally after decades of lawsuits and nonviolent protests, and as the moment finally came for the creation of Social Security, the iron is now red hot for fundamental change in our Nation's health care system, and that fire is not going to cool until we have a President and a Congress willing to hammer out a truly comprehensive American plan for universal and affordable health care.

THE PRESIDENT'S HEALTH CARE REFORM PROPOSAL

Mr. CRAIG. Mr. President, this morning our President, George Bush, released his health care reform proposal. It has been talked about to some extent on this floor this afternoon and early evening. I must say the greatest disappointment I have already heard is the drumbeat of fearmongering that is suggested by some of our colleagues that this is too little too late and does not address the very real concern in this country of health care, affordable and accessible to those who now do not have it.

I think we all agree on the numbers: 15 percent of the American people, some 37 million Americans at this time do not have access at least at the level and to the degree that most of us would wish that all Americans could have. But I believe what our President has done today is a strong approach toward recognizing that the consumer has to be and must be in this debate a major and integral part of the whole process. And he has said to us, I am going to move in a clear and definable direction and engage all of us in the Senate and across America in a debate that must go on.

Not that we should rush to judgment, Mr. President, in the next 2 to 3 months, because I do not think we should and I do not think we can. I do not think the American public is yet ready to decide on a single package unless it costs them nothing or unless someone will give them something that they are already not being given.

But all of us recognize that it will cost something. It is already costing between $750 billion and $800 billion a year for our current health care system. And there are some who are suggesting we ought to pay more. There are a good many of us who are suggesting that we already pay enough. The level or the amount of money being consumed in health care is not the issue. The issue is its distribution. The issue is the access, the programs, that which is or is not working today and how we might work it better, or at least design a program that will take us in a direction of affordability and access.

You have heard, by a good many, from a good many on this floor, that increasing Government involvement and putting financing back on to business is the way out. I would suggest that it is not the way out. If that is the answer, that is a cop out. That is not the appropriate response to the problem.

My colleague from Idaho and I, last session, introduced Senate 2095, and I must say today I am pleased that our President has taken portions of that package and introduced them as an approach toward the resolution of this problem. What am I talking about? I am talking about returning health care to the marketplace to be driven by the consumer. So last November Senator SYMMS and I introduced legislation that would begin to do that and offer choice and a quality of choice that does not exist in health care today.

The main purpose of S. 2095 is to make the individual more aware of what he or she is paying for in health care so that they will have choice of cost-effective options. This is done through a refundable tax credit to the individual for health insurance.

In other words, what we are simply saying, Mr. President, is that it is going to be cost effective for those who

do not have health care today to be going through the front door of the doctor's office or the clinic instead of waiting until the last minute to go through the front door of the emergency room. That is what we are saying. And to do that, we are going to make an insurance program available to those who do not have it. That is, by some estimates, today an 11-percent savings across the board of the current level of health care across this country. I think that is extremely significant.

The legislation also encourages self-insurance for out-of-pocket expenses through a tax exempt individual medical account, better known as an IMA. Money put into the savings account could be used for any form of deductibles, to cover future unforeseen health care costs.

Mr. President, continuing on the path of increased Government involvement in health care means continuing to attempt to control costs though Government mandates. I know the President and I have been here for a good number of years. In the course of those years, we have attempted to do just that: to control health care costs. We reformed Medicare in the mid-1980's. We are constantly adjusting Medicaid. The average cost of increase in Medicaid is around 24 percent. This last year, when the figures are in, it will be estimated at an increase of 38 percent. And that is control? You bet it is. That is what we have been saying. Those are the kinds of Federal mandates that have controlled the health care programs of this country, and they simply have not worked.

I think our President was strong today in his course and in his direction. He has engaged us in the debate that is necessarily needed for now and for the future. Will we resolve this by election day November 1992? Frankly, Mr. President, I do not think we can, and I hope we do not because I believe that this is such a complicated issue and that the impact on young and old Americans alike, present and future, will be so significant that we dare not err in that which we proceed to do because once it is in place, once we have said to the American people you have a program and a level of dependency is built upon it, we will find it both economically and politically impossible to change. So we cannot err. And to be safe and not err, we have to debate it.

For those who will stand on the floor now and through the winter, the spring, and the summer months to discuss this issue, let me suggest that if they say we do it now, they say we do it for political purposes come November. But if they say we debate it, we review it, and we dedicate ourselves to a resolution of this problem, once all of the answers are in, as best we can prescribe it, then I would suggest we are after a meaningful health care delivery system in this country that puts it where it ought to be, back into the market, back where you and I have the choice and our voters have the choice, and recognizing that it will be paid for under current levels of expenditure, that we will not overtax the American people, that we will develop a system competitive not just for us but for the world around us.

That is the resolution. That is what our President is saying. That is the debate that he has engaged us in today, and I applaud him for his leadership and his action.

I yield the floor.

HEALTH CARE

Mr. SPECTER. Mr. President, I want to make a very brief comment on the health care issue. It is timely as much discussion has been held on the Senate floor in the course of the last several hours regarding the President's health program, today introduced by the distinguished Republican leader. I shall not be long, because I know the managers want to move ahead with this legislation.

I am glad that the President has now submitted his legislative proposal. His joins a great many proposals which are currently pending in the Senate. I joined with the distinguished Senator from Rhode Island, Senator CHAFEE, on the Republican task force on health care as an original cosponsor of a comprehensive proposal. Additionally, I introduced a bill of my own, S. 1955. I have been very active in this field during the course of the past 11 years on the Appropriations Subcommittee on Labor-Health, Human Services and Education, the past 3 years as ranking member of that committee.

I have noted that there have been critical comments directed at the President by Members on the other side of the aisle. I express the same opinion today as I did yesterday on the President's economic package, that we move forward from this point on the President's health care package.

I have not had an opportunity to study the details of the President's package. My preliminary observations are that it is a good step forward, and what I would like to see done is that the Senate tackle this issue immediately. I know we cannot do it next week, although some might like to, but we should address reforms of the health care system so as to provide health care for all Americans.

I believe that is unconscionable that we have some 37 million Americans not covered by health care. I believe health costs are exhorbitant. My conversations with major corporate executives like Walt Williams of Bethlehem Steel, as well as with small businessmen around my State, I have found that those who provide coverage find it enormously expensive. We must move forward forcefully in an attempt to control costs.

I believe that in the area of infant care, for example, we can have major savings. I became interested in 18-ounce babies in the early 1980's when I found out that Pittsburgh, PA, had the highest mortality rate of African-American infants in the Nation. It is a remarkable thing to see a baby which weighs a pound and two ounces, about as big as your hand, and they come into this world from children themselves, 12-, 13-, 14-year-old girls. It is a human tragedy for the child and the mother who go without proper parental care.

Similarly, there has been the issue of terminal costs, very high in the last few days, weeks or months, of the life cycle. Last December 1, a Federal law went into effect which calls the attention of patients entering hospitals on Medicare to the availabilities of living wills. No person can say for another what life supports there ought to be. But to have that issue addressed could result in very considerable savings.

A well-managed health care is an area where there could be enormous savings.

The U.S. health system in Philadelphia is operated by a distinguished Pennsylvanian, Mr. Leonard Abramson, author of a superb book on this subject. He has made an offer to the Department of Health and Human Services to take a control group of 100,000 Medicare patients, which he would manage, and compare that group with another 100,000. He is confident that he can achieve a minimum of 25 percent savings with his program.

I make these comments very briefly, Mr. President, to outline some areas where I think there could be enormous savings on health care. These issues—and many others—ought to be considered by this body at an early date so we can move forward toward a consensus on the health plan to cover all Americans.

BUSH HEALTH CARE PROPOSAL

Mr. CRANSTON. Mr. President, the health care proposal released by President Bush today will do little to help the 37 million uninsured Americans and bring down the skyrocketing health care costs.

I am relieved that President Bush has finally realized that there is a health crisis in the United States. Unfortunately, the President's plan will not guarantee Americans access to health care nor attack the root causes of the high costs of health care. Without an overhaul of the health care system, we will move from a crisis to a debacle. It is estimated that in 2 years, 60 million Americans will be without health care and the cost of health care will more than double in the next decade to $1.6 trillion.

In California, 5.9 million do not have any health insurance. A third of the uninsured are children and another third are adults. A startling 87 percent

of the uninsured are working people. The number of uninsured Californians is particularly high among Hispanics. A recent poll found that 4 out of every 10 Hispanics do not have health insurance because many work in industries that do not provide health care benefits.

President Bush's health care proposal provides little relief to Americans who cannot afford insurance. The President's plan provides for tax deductions and credits but does not contain a plan that will reduce health care costs effectively. The President said he will make insurance affordable for Americans by providing tax deductions and credits. These deductions and credits make little sense without a mechanism that reduces runaway health care costs.

The President's plan fails to offer such a mechanism. Rather the President in his speech today put the burden of reducing health care costs on small businesses and consumers. He suggested that small businesses form health insurance networks [HIN] to obtain lower insurance rates and that consumers shop more wisely when purchasing health insurance. The President failed to offer a concrete proposal to combat the root causes of high health care costs—insurance premiums, and administrative and medical costs.

It is estimated that the costs of the proposed tax credits and deductions would be $100 billion over 5 years. The President plans to make the elderly, disabled, and very poor Americans pay for his health care plan by reducing funding for Medicare and Medicaid. Cutting Medicare and Medicaid benefits will hurt the neediest Americans. This is an insensitive and ineffective way to cut health care costs and reform our health care system.

Fortunately, there is legislation pending in Congress that will take a more comprehensive approach to reforming the health care system. The Health America proposal introduced by the Majority Leader, Senator MITCHELL. I support this proposal which would reform our present health care system in order to provide health care to all Americans as well as attack the causes of high health costs. Universal access to health care for all American families would be guaranteed by requiring employers to provide coverage meeting basic standards to their workers and their families or contribute a percentage of their payroll to a new public insurance program called AmeriCare. AmeriCare would provide coverage to the unemployed and to workers whose employers have chosen to contribute to the public program. The Health America proposal includes a cost containment plan which will eliminate cost-shifting by insurance companies, reduce unnecessary care, reduce administrative costs, and establish a board which will develop cost containment programs. This plan is estimated to save the Nation $80 billion over 5 years. The proposal also would provide assistance to small businesses through such mechanisms as a phase-in period and favorable tax treatment for the self-employed. Finally, HealthAmerica will lower premium costs by encouraging use of managed care plans.

Now that the President has recognized that America is in a health care crisis, I hope he will work with this Congress to pass legislation that will guarantee all Americans access to quality health care and reduce health care costs. We need a real health care plan, not a sham.

Mr. SYMMS. Mr. President, today, the President is unveiling his health care proposal. I have not yet seen all the details, but his proposal seems to be comprehensive, well-thought out, and definitely heading in the right direction.

Mr. President, the health care debate has just taken an enormous step forward. There are problems in our health care system. Serious problems. And we have to have serious proposals to deal with these problems.

Our friends from the other side of the aisle have two serious proposals: Socialized medicine and extortion—what they call pay or play. It may sound harsh, but pay or play is just legalized racketeering. Either play by our rules or we will tax you into the ground. If we go down this route, maybe the first administrator should be somebody from the mob who really understands this business—I wonder if John Gotti needs a job?

One thing you have to admit about socialized medicine and the pay-or-play racket, these plans are serious—serious as a heart attack.

The President's proposal will provide access to health insurance for all poor families. It includes medical liability reform, insurance market reform, and encourages the growth of coordinated care. More importantly, it promotes individual responsibility in health care.

The President's plan includes a tax credit for health insurance. I think that is exactly the right direction to go in. Frankly, about the only reason I can find to oppose this approach is that it runs 180 degrees opposite of the socialized medicine or extortion approaches. The President's plan emphasizes individual choice. It emphasizes the role of the individual in the market for health care. The other proposals are based on Government controls and government mandates. What we have here is a classic confrontation between the forces of government control over our lives, and the forces of individual choice.

There is something confusing about the response to the President's proposal, however. Where are all my liberal friends when the President proposes a tax credit for the poor to buy health insurance? My Heavens—they talk about middle-income tax cuts and helping the poor, they talk about the uninsured. Well, the President's plan addresses these problems head on. Do they care more about expanding government or is all their talk about helping the poor just that—just talk.

The President has taken the right road, but I am afraid he has not pursued it to its logical conclusion.

We should not just have a credit for the poor, though we should certainly have that. We should allow everyone to have a credit when they buy health insurance. And we should allow everyone a tax-exempt savings account to save for their out-of-pocket expenses. We should take every reasonable opportunity to make the individual more of a player in his medical choices. I have introduced a bill that allows such a credit and savings account. It is paid for by equalizing the playing field in the tax code.

I hope my colleagues will take a look at the bill, Senator CRAIG and I introduced, S. 2095. A lot of thought has gone into this plan, and not just by my office. This plan builds on the extensive work done by the Heritage Foundation and by the National Center for Policy Analysis in Dallas. This is the only direction that can bring health care costs down, in my opinion. This is the road we must follow.

NATIONAL ENERGY SECURITY ACT

The Senate continued with the consideration of the bill.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator from Louisiana.

Mr. JOHNSTON. Madam President, I will shortly send two amendments to the desk on behalf of Senator HATFIELD. When the committee considered the hydroelectric provisions, Senator HATFIELD offered an amendment which would permit the Bonneville Power Administration to fund certain conservation and development features at Federal projects in the Pacific Northwest. These amendments clarify that language which Senator HATFIELD gave and corrects some technical problems which we had not worked out fully with the committee. The two amendments relate to the Columbia River water conservation and also the Columbia River hydropower amendment.

AMENDMENTS NOS. 1586 AND 1587, EN BLOC

Mr. JOHNSTON. Madam President, I send to the desk those two amendments and ask for their immediate consideration. I ask unanimous consent that they be considered en bloc.

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

The clerk will report the amendments.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. HATFIELD, proposes amendments numbered 1586 and 1587, en bloc, as follows:

AMENDMENT NO. 1586

On page 106, after line 20, insert the following new section 5308:

"SEC. 5308. Without further appropriation and without fiscal year limitation, the Secretaries of the Interior and Army are authorized to design, construct, operate and maintain generations additions, improvements and replacements, at their respective Federal projects in the Pacific Northwest Region as defined in the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), P.L. 96-501, 16 U.S.C. Sec. 839a(14), and to operate and maintain the respective Secretary's power facilities in the region that the respective Secretary determines necessary or appropriate and that the Bonneville Power Administrator subsequently determines necessary or appropriate, with any funds that the Administrator determines to make available to the respective Secretary for such purposes. Each Secretary is authorized, without further appropriation, to accept and use such funds for such purposes: *Provided*, That, notwithstanding any other provision of law, the receipts and disbursements of the Bonneville Fund and the expenditures of each Secretary from Fund transfers made pursuant to this section shall be exempt from any budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government, including any budget law deficit calculation, sequestration order or discretionary spending limit: *Provided further*, That this section shall not modify or affect the applicability of any provision of the Northwest Power Act. This provision shall be effective on October 1, 1993."

AMENDMENT NO. 1587

On page 104, after subsection (e), insert the following new subsection (f):

"(f) Without further appropriation and without fiscal year limitation and notwithstanding subsections (b) and (d) of this section, the Secretary of the Interior is authorized to design, construct, operate and maintain water conservation features that the Secretary and the Administrator of the Bonneville Power Administration determine necessary or appropriate at Federal Reclamation projects in the Pacific Northwest Region as defined in the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), P.L. 96-501, 16 U.S.C. Sec. 839a(14) pursuant to subsection (a), with any funds that the Administrator determines to make available to the Secretary for such purposes. The Secretary is authorized, without further appropriation, to accept and use such funds for such purposes: *Provided*, That, notwithstanding any other provision of law, the receipts and disbursements of the Bonneville Fund and the expenditures of the Secretary from Fund transfers made pursuant to this subsection shall be exempt from any budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government, including any budget law deficit calculation, sequestration order or discretionary spending limit: *Provided further*, That this section shall not modify or affect the applicability of any provision of the Northwest Power Act. This provision shall be effective on October 1, 1993."

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Mr. HATFIELD. Madam President, although the Senate is working on legislation to improve the Nation's energy security, I offer two amendments today which, as one of their primary purposes, will benefit several weak stocks of Columbia River Basin salmon—one of which already has been designated as an endangered species.

As most of my colleagues know, we in the Pacific Northwest are dealing with our second major listing of an endangered species in the last few years. While Senators all are probably familiar with the northern spotted owl, they may not yet be acquainted with the Snake River sockeye and chinook salmon.

The amendments which I am proposing will assist the people of my region in solving the endangered salmon problem within the borders of the Pacific Northwest. Not only will these amendments assist in the recovery of the weak salmon runs, they will do it without greater reliance on funds from the Federal Treasury. In fact, if the amendments are enacted, they will actually result in a small profit to the Federal taxpayers.

The citizens and political leadership of the Pacific Northwest have learned a great deal from the experiences associated with the spotted owl. From the time the first salmon petition was filed, the Northwest has striven to find ways to assure the survival of these precious fish species. The salmon have always been a unique part of the culture of the Northwest and we intend to ensure that there will be salmon in our rivers and streams for future generations.

At the same time, we also want to ensure that our efforts to protect the salmon do not tear apart the fabric of our already strained economy. It has been our assumption throughout these last 2 years that we can have both. We can protect and enhance our salmon runs and nourish our fragile economy. These two objectives are not and should not be exclusive of one another.

After 2 years of strenuous effort, the region has produced an initial plan which credible biologists assure us has the elements necessary to save the endangered Snake River salmon. The plan, which has been endorsed by the Governors of Oregon, Idaho, Washington, and Montana, is just the first step in what will be a long and difficult process. The plan gives us reason to believe, however, that the salmon can be recovered without destroying the region's economic engine.

This is not to say, though, that there will not be a significant cost to the region. The plan will have adverse effects on current irrigation, navigation, fish harvesting, and recreational practices in the Northwest. Perhaps the largest dollar impact will be to the electric ratepayers of the Northwest. The Northwest Power Planning Council, which developed this plan after the conclusion of the salmon summit, estimates that the cost to electric ratepayers in the Northwest will range from $70 to $250 million annually. Let me repeat that. It is estimated that the ratepayers of the Northwest—not the taxpayers of the United States—will pay between $70 and $250 million each year for salmon recovery in their electric rates alone.

Let me take just a moment to put these numbers in context. There has been a great deal of discussion recently regarding the California condor captive breeding program which now appears to be on the verge of success. A recent Washington Post article indicated that the total cost of that program has been $25 million. In other words, the minimum annual contribution that electric ratepayers alone will pay to protect the salmon is triple the total cost of the California condor program. According to another recent Washington Post article, the total U.S. Fish and Wildlife Service's budget for protecting all the species on the endangered species list is $38 million. This will be half the minimum annual contribution from electric ratepayers in the Northwest for protecting the salmon.

Madam President, the Pacific Northwest is prepared to stand up and pay more than its fair share toward protecting our endangered species. In fact, we already are doing it.

I am here today to ask for my colleagues' assistance in correcting one technical problem which stands in the way of the Northwest achieving recovery of the Columbia River basin salmon runs at the least possible cost to the Federal taxpayer.

Much of the additional cost to electric ratepayers occurs because of changes being made to the operation of the vast hydroelectric system in the Northwest. These changes will result in reducing the capability of the system. It is expected that these changes will reduce the system capability by about 400 average megawatts—the equivalent of approximately one medium-sized coal plant. Therefore, the Bonneville Power Administration and the region's utilities are finding it necessary to purchase additional energy. These purchases are costly both from an economic and an environmental perspective. Generally, these purchases are coming from thermal plants throughout the West which are increasing their operations. The economic costs are borne by Northwest ratepayers. The environmental costs are borne all across the Western United States and Canada.

One means of replacing at least a portion of this lost energy is to better operate and maintain the existing capability at the Corps of Engineers and Bureau of Reclamation facilities in the Columbia River Basin. In addition, there are significant opportunities to

increase the generating capability on these existing plants. These increases can be accomplished at significantly lower cost than the existing alternatives and without harming fish or otherwise incurring environmental costs.

What stands in our way of accomplishing such a worthwhile objective one may ask? Merely the ability to transfer funds from the ratepayer-financed Bonneville Power Administration to the Corps of Engineers and Bureau of Reclamation.

As Senators may know, Bonneville must pay all its bills with funds collected from ratepayers. When BPA wants to borrow money it is required to borrow from the U.S. Treasury at a rate which makes a profit for the Treasury. Therefore, if this amendment is accepted, not only will there be no cost to the Federal taxpayers, there will actually be a profit in it for them every time BPA borrows money for these investments. Because BPA ratepayers will be on the hook to pay for any of these investments you can be assured that there is a self-regulating mechanism to assure that unnecessary investments are not made. In addition, Bonneville will continue its existing consultative process with its customers prior to initiating capital expenditures under these provisions.

My colleagues in the Pacific Northwest and I have made significant efforts to work with our constituents to keep the salmon issue from becoming a difficult and divisive issue which will require the Senate's attention. While we cannot guarantee success, we do have cause to believe our efforts have not been in vain. I am now asking the Senate's help in allowing us to try to solve this problem within the region, without any financial contributions from the Federal Treasury. I ask Senators' support for these amendments.

Madam President, I rise to offer an amendment in furtherance of an objective of the proposed National Energy Security Act of 1991—namely the provision of low-cost environmentally sound energy resources.

To further the achievement of this objective, the Congress needs to clarify existing authorizing authority to enable the full hydroelectric development of Federal projects in the Pacific Northwest so that they can provide reliable and environmentally sound electric power resources. Such resources remain available for further development in the Pacific Northwest, are needed to meet projected energy requirements and the Congress should clarify that existing financial tools are available to help achieve this objective.

Specifically, I propose to clarify that the Secretaries of the Departments of the Army and the Interior can accept and use financial resources provided by the Bonneville Power Administrator to increase the energy efficiency at Federal projects in the Pacific Northwest.

Madam President, my amendment would clarify that the BPA may use its existing self-financing flexibility to increase the energy efficiency of Federal projects in the Pacific Northwest. This would be accomplished by enabling the BPA Administrator and the Secretaries of the Departments of the Army and Interior to work together to identify hydroelectric power resources that can be developed through additions, improvements, and replacements at Federal projects in the Pacific Northwest with the assurance that the Secretaries of the Army and Interior can each accept and spend money from BPA for these purposes. The BPA ratepayer funded self-financing mechanism is available to increase the energy efficiency of the Federal Columbia River Power System [FCRPS] without placing any burden on the U.S. taxpayer. This amendment would also eliminate a double appropriation by the Congress.

The amendment would also clarify that the Secretaries of the Departments of the Army and the Interior can accept and use funds provided by the BPA Administrator to operate and maintain Federal power facilities at Federal reclamation projects in the Pacific Northwest.

NATIONAL ENERGY STRATEGY CONSISTENCY

The national energy strategy calls for the full development of the hydroelectric capacity of existing Federal projects.

The national energy strategy specifically addresses, on pages 122 and 123, the problem I propose an available remedy for in my hydro efficiency amendment. The strategy states and I quote:

> The funding process for operation and maintenance and equipment and efficiency improvements at existing Federal hydropower projects is overly complex and inefficient. These funds currently are collected by the Federal power marketing administrations and deposited into the Federal Treasury. The Corps of Engineers and the Bureau of Reclamation must then ask Congress to appropriate these funds. These requests must then compete with other agency budget requests. Additionally, once appropriated, these funds may be diverted to nonhydropower activities. * * * For Federal hydropower projects, the Strategy calls for greater cooperation among the power marketing administrations and the Federal operating agencies to identify and fund operation and maintenance activities and efficiency improvement. * * * Coordination and planning among the power marketing administrations and the Federal operating agencies will allow resources to be allocated to the highest priority operation and maintenance and replacement of inefficient equipment.

I support the strategy, but propose that we go one step further. I propose that cooperation include the use of existing BPA financial resource flexibility to achieve such efficiency improvements, including associated fish and wildlife mitigation and enhancement measures. In the case of BPA, existing financial tools are available to make major progress in achieving Federal hydroelectric power efficiency improvements.

The potential exists for developing in the Pacific Northwest replacements, improvements and additions at Federal projects that would provide low cost and environmentally sound resources to meet BPA firm power sales contract requirements.

NORTHWEST HYDRO RESOURCE PROJECTIONS

BPA has already identified approximately 184 average megawatts of hydroelectric energy that can be developed through efficiency upgrades on existing projects. About 45 average megawatts can be acquired by improving generator controls at corps projects. A further 86 megawatts can be acquired by installing new generators at corps and Bureau projects. Another 11 to 23 average megawatts can be provided by raising the reservoir at Chief Joseph Dam. Also, 30 average megawatts can be obtained by rebuilding or replacing the turbines at Chief Joseph Dam, units 1 through 16. These hydro efficiency improvements are included in the Pacific Northwest Electric Power Planning and Conservation Council's—Regional Council's—draft 1991 northwest conservation and electric power plan. The plan includes 110 average megawatts of hydro efficiency improvements in its proposed resource supply mix. The draft plan also calls for the purchase of 1,350 megawatts of conservation over the next 10 years. This 184 megawatts would be a significant contribution to that goal.

BPA FACES POWER DEFICIT

BPA's current electric load forecast underscores that the surpluses projected in previous years no longer exist for BPA. Under the medium load forecast, BPA is projected to have a firm deficit of about 260 average megawatts for 1992 through 1996, a firm deficit of 100 average megawatts for 1997, and an increasing firm deficit to a maximum of 1,350 average megawatts by 2011, the end of the 20-year planning horizon. In January 1991, BPA began seeking proposals for 100 megawatts of guaranteed energy from utilities, government agencies, and private developers. In March, the agency increased the call to as much as 300 megawatts and anticipated that it would need about 500 average megawatts of new sources of energy by the mid-1990's if demand continues to increase at forecasted growth rates.

THE AVAILABLE SELF-FINANCING TOOL

BPA's self-financing authority, the Federal Columbia River Transmission System Act [FCRTSA] of 1974 (P.L. 93-454), provides the financial mechanism which is available to fully utilize this existing and untapped potential without placing any burden on U.S. taxpayers.

In 1974, Congress enacted the FCRTSA, which gave BPA additional authority to carry out its functions in a businesslike and financially flexible manner. The act established the BPA Fund, a separate fund in the U.S. Treasury, and authorized BPA to make expenditures from the BPA Fund without further appropriation and without fiscal year limitation. BPA's borrowing and revenues, including those from the sale of power and related services, are deposited in the BPA Fund. To pay the costs of the FCRPS, BPA is authorized to make expenditures from the fund. The BPA Administrator may make expenditures without further appropriation and without fiscal year limitation, subject to such directives or limitations as Congress may include in an appropriations act. In enacting the FCRTSA, Congress gave BPA the ability to carry out its mission free from the uncertainty inherent in the annual appropriations process.

BPA PAID FOR FLEXIBILITY

In exchange for this financial flexibility, the BPA ratepayers assumed the obligation of paying higher interest rates for funds BPA borrowed from the U.S. Treasury than would have been available under no-year appropriations. Historically since enactment of the FCRTSA, BPA interest rates on Treasury borrowing have averaged about six-tenths of 1 percent above the Treasury's long-term cost of money. BPA is required to set its rates for electric power and related services at levels sufficient to pay all of its costs, including repayment of the Federal investment in the FCRPS. This assures that the BPA power system will be supported by BPA ratepayers and will not be a burden on Federal taxpayers. The BPA Fund, therefore, is self-financed by means of a permanent, indefinite appropriation.

DIRECT VS. DISCRETIONARY PROGRAMS

BPA's direct costs, including the program costs for which it borrows funds from the U.S. Treasury, now include the BPA transmission program; conservation; protection, mitigation, and enhancement of fish and wildlife; and other costs incurred by BPA in implementing its various authorities, including the 1980 Pacific Northwest Electric Power Planning and Conservation Act (Regional Act/P.L. 96-501). Under current budget law, these activities are considered a direct program and are not subject to sequestration.

Even though all construction, operation, and maintenance costs of the Federal hydrogenerating projects are still repaid from the same electric power rates that repay the above direct program costs, the construction, operation, and maintenance costs for Federal electric generation by the Bureau and corps are currently considered discretionary program, subject to sequestration and Congress first appropriates the outlay from the general treasury. Once the appropriation is outlayed, it is repaid over time with money from BPA. Operation and maintenance outlays are collected from ratepayers and recovered from BPA ratepayers and repaid to the Treasury within the same year. Further, I am informed and am concerned that, under current executive branch budget planning assumptions, the Office of Management and Budget does not provide for outyear inflation in its planning targets for either the Bureau of Reclamation or the Corps of Engineers hydrofunctions.

In summary, the power marketing function which legally must meet electric load requirements is considered a direct spending program not subject to sequestration and the hydroelectric energy supply and maintenance function, which currently provides 90 percent of BPA's power requirements, is considered a discretionary program. As this infrastructure ages, this budget approach must lead us to ask, "Is something wrong in River City?"

AVOIDING A DOUBLE APPROPRIATION

Madam President, my amendment would promote the achievement of increased hydrogeneration while avoiding the double appropriation by the Congress. Currently, some may believe, in my opinion erroneously, that the Secretaries can only spend money on these types of projects, if that money has been directly approved for their use in the appropriations process. The cost of the projects are then repaid over time with money from BPA, which has also previously been approved as a permanent appropriation. My amendment would remove the duplication by clarifying the allowed use of BPA funds directly and up front. I should say at this point that the merits of this amendment were obvious to almost anyone and committee members supported adoption of the amendment. First, it would cause a reduction in Federal expenditures and second, additional amounts of a clean, renewable resource—hydroelectric energy—would be generated with no significant environmental consequence.

If all this is true, why, you may ask, did not Dudley Doright save the fair damsel in distress? Enter the villain. The Congressional Budget Office [CBO] in its infinite zeal and stalwart defense of the budget process and Federal Treasury concluded that my amendments which I sought to offer in the Senate Energy Committee created new direct spending and would subject the bill to a point of order on the Senate floor. Assuming the CBO staff with the green eyeshades are correct, which I do not, we the Congress have created a budget process which results in Members being unable to offer amendments which save real dollars solely because CBO's scoring matrix spits out an erroneous conclusion that they cost money. Thus, I decided to introduce my hydro efficiency amendment on the Senate floor and let it stand or fall on its merits. Clarifying that existing direct funding is available is beneficial to both regional ratepayers and to the Nation's taxpayers. For taxpayers, the second appropriation will be eliminated. Clarifying the flexibility to pay these costs directly instead of repaying the appropriations will result in somewhat lower rates than would otherwise occur in the long run as both cost-effective investment and proper maintenance will be financially assured.

CLARIFICATION OF AUTHORITY

The proposed amendment would clarify the authority of the Secretaries of Army and Interior (the Secretaries) to construct additions necessary to fully utilize the potential at Federal projects within the Pacific Northwest. Section 2(a) of the Bonneville Project Act, 16 U.S.C. section 832a(a)—Project Act—provides for the installation of additional generation facilities at the Bonneville project when in the judgment of the BPA Administrator such facilities are desirable to meet actual or potential market requirements for electric energy. Through secretarial orders and section 8 of the FCRTSA, the Administrator's authorities under the Project Act, including section 2(a), have been extended to all projects for which the Administrator is the power marketing agent. The Secretaries have authority to design, construct, operate and maintain generation additions, improvements, and replacements at their respective projects pursuant to other congressional laws and that authority would not be changed by this amendment. Federal projects in the Pacific Northwest region, in addition to those for which the Administrator is the power marketing agent, have also been identified as potential efficient sources of electric power that could be developed under this enactment.

The authority to construct additions under the section 2(a) authority has been questioned. A recent ruling by the Federal Energy Regulatory Commission [FERC] refused to recognize the applicability of this authority beyond Bonneville Dam facilities to the recapture of a portion of the power lost at the Dworshak project due to a water diversion for fish mitigation. BPA has proposed to install a generator in the diversion intake line to mitigate the loss of Federal power from the diversion.

The proposed amendment makes it explicit that the Secretaries of the Army and the Interior each continue to have the authority within specified limits, without further appropriation and without fiscal year limitation, to make additions, improvements, and replacements that the Administrator and the respective Secretary determine necessary or appropriate at Federal projects in the Pacific Northwest region with any funds that the Administrator determines, after consultation

with the respective Secretary, to make available to such Secretary for these purposes. Those funds include revenues, the proceeds from the sale of bonds to the U.S. Treasury and other sources as the Administrator deems appropriate. This funding will continue to assist the Administrator in implementing his responsibility under the Northwest Power Act to meet the contracted load requirements of his customers. This enactment also clarifies that each Secretary is authorized to accept and use funds from the Administrator for these purposes, and that the Secretaries are each authorized to accept and use such funds for the purposes of operating and maintaining Federal power facilities at Federal reclamation projects in the Pacific Northwest, without regard to any limitation established under any other provision of law or rule of law, including augmentation law.

It is my understanding that, consistent with the hydroelectric energy efficiency elements of the President's national energy strategy mentioned above, the BPA and the Bureau of Reclamation have agreed to the terms of a memorandum of understanding under their existing authorities whereby BPA would directly fund hydropower efficiency additions, improvements, and replacements at reclamation facilities in the Pacific Northwest. They and their departments are to be commended for their efforts to implement the President's national energy strategy. These and similar efforts between BPA and the Corps of Engineers are strongly encouraged and should continue, regardless of the effective date of this amendment, since this amendment is only a clarification of the three Federal agencies' existing authorities. The delay in the effective date of this amendment is for budgetary scorekeeping reasons only and is not intended to delay implementation of the three agencies' existing authorities.

CONGRESSIONAL OVERSIGHT STILL ASSURED

More than sufficient congressional oversight is assured because section 11(b) of the FCRTSA provides that Congress may by appropriation act place limitations on BPA expenditures.

BUDGET TREATMENT UNDER THE NEW PROVISION

Under current Federal budget law, the receipts and disbursements of the self-financed BPA Fund are considered direct spending authority which finance a mandatory activity—the provision of electric utility service to BPA electric ratepayers. Receipts and disbursements made pursuant to this new act will continue to be: First, included in the totals of the President's budget and of the congressional budget; second, treated as direct spending under the Budget Enforcement Act of 1990 (Public Law 101-508); and third, exempt from any limitation under the Budget Enforcement Act and from any general limitation imposed by statute on expenditures and net lending—budget outlays—of the U.S. Government.

Such budget limitations include but are not limited to any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), any deficit calculation under section 3(6) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344) for purposes of comparison with the maximum deficit amount under the Balanced Budget and Emergency Deficit Control Act of 1985, any counting of receipts and disbursements in calculating the excess deficit or sequestration of discretionary spending for purpose of sections 250 through 258 of the Balanced Budget and Emergency Deficit Control Act of 1985, for any fiscal year.

For all budgetary limitation purposes, the Secretary's expenditures of BPA funds pursuant to this act shall be considered to be BPA expenditures.

NORTHWEST POWER ACT APPLICABILITY

A proviso has been included in this amendment to make it clear that despite the notwithstanding language in this amendment, this amendment is not intended to modify or affect the applicability of any provision of the Northwest Power Act.

CONCLUSION

Madam President, I strongly believe the merits of this amendment are obvious. The amendment will benefit both the region's ratepayers and the Nation's taxpayers for the reasons I have just discussed. For all these reasons, I respectfully urge that the Senate adopt my proposed Columbia River hydropower efficiency amendment to the proposed National Energy Security Act of 1992.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendments.

The amendments (No. 1586 and No. 1587) were agreed to.

Mr. JOHNSTON. Madam President, I move to reconsider the vote by which the amendments were agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1588 TO AMENDMENT NO. 1544, PREVIOUSLY AGREED TO

Mr. JOHNSTON. Madam President, I ask unanimous consent that it be in order to amend a previous amendment, No. 1544, offered by Mr. GLENN, and I send that corrected amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes an amendment numbered 1588 to amendment No. 1544, previously agreed to.

Amend as Johnston 2nd degree amendment to Glenn amendment, No. 1544, page 5, line 23, as new subsections (d) and (e) in section 4111 the following:

"(d) POSTAL SERVICE COORDINATION.—To the maximum extent practicable, the Postmaster General shall coordinate its alternative fuel vehicle procurement, placement, refueling, and maintenance programs with those at the Federal, State, and local level. The Postmaster General shall communicate, share, and disseminate, on a regular basis, information on such programs with the Secretary, the Administrator, and heads of appropriate Federal agencies."

"(e) POSTAL SERVICE PROGRAM CRITERIA.—The Postmaster General shall consider the following criteria in the procurement and placement of alternative fuel vehicles:

"(1) the procurement plans of State and local governments and other public and private institutions;

"(2) the current and future availability of refueling and repair facilities;

"(3) the reduction in emissions of the Postal fleet;

"(4) whether the vehicle is to be used in a nonattainment area as specified in the Clean Air Act of 1990;

"(5) the operational requirements of the Postal fleet;

"(6) the contribution to the reduction in the consumption of oil in the transportation sector."

Mr. JOHNSTON. This is simply a correcting amendment to correct a clerical error.

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

The amendment (No. 1588) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Madam President, I ask unanimous consent that Senator ADAMS be added as a cosponsor to Senator INOUYE'S amendment in relation to native American energy resources previously adopted.

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

Mr. Gore addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

AMENDMENT NO. 1589

Mr. GORE. Madam President, I sent 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 Tennessee [Mr. GORE] proposes an amendment numbered 1589.

On page 12, line 19 after "change," insert "pursuant to which industrialized countries, including the United States shall commit to stabilizing their emissions of carbon dioxide at 1990 levels by the year 2000,"

Mr. GORE. Madam President, this amendment is designed to take action now with regard to global climate change instead of waiting, as we have, with ozone depletion.

Earlier today, the Senate went on record unanimously as calling upon the President to accelerate the phaseout of ozone depleting chemicals as he is required to do by law when new evidence is released of the kind which was released last April, again last fall, and most recently last Monday of this week.

Several statements were made that this was simply an iteration of current administration policy. If so, the administration policy changed as soon as the amendment was offered and still the EPA has not come forward with a proposal to comply with the law by accelerating the phaseout of those chemicals.

The statement was made that HCFC's are included in the amendment in the section which directs us to negotiate with other countries and that many other countries do not include HCFC's or hydrochlorofluorocarbons in their policies as we do.

This was cited as evidence of the fact that the United States, on that particular point, is ahead of other countries. True enough. A little history on that. Why are HCFC's included in our policy? Because of an amendment which was introduced in this Senate and subsequently enacted into law which was opposed vigorously by the Bush administration and was adopted over their opposition and now is the law in spite of their opposition.

But all of that is background for the amendment that is now pending. The scientific community told us almost two decades ago that the continued release of chlorofluorocarbons and similar chemicals would cause an ecological catastrophe if we continued the practice, and yet we continued the practice anyway. Those same scientists are now telling us, and have been telling us for several years now, that the continued release of carbon dioxide at the absurdly high levels which it is now being released into the global atmosphere will cause an ecological catastrophe much worse than the one associated with the depletion of the stratospheric ozone layer.

We have an opportunity with this amendment to act before the problem reaches the critical phase rather than waiting until after it has reached the critical phase, as happened with chlorofluorocarbons. Not until the discovery of the ozone hole above Antarctica did the United States agree to move forward even with the provisions of the Montreal protocol. Not until the discovery of an impending ozone hole above Kennebunkport did the Bush administration agree to comply with the law. Of course, they have not yet done it. The EPA has said they will do it. But they said last April they would do it, and the White House nixed it. I take it on good faith this time the President will comply with it, but not until the ozone hole impending above the Northern Hemisphere did the President finally give some indication that he might be willing to comply with that law.

Do we have to wait until this problem reaches its critical phase and we have catastrophic global climate changes before we are willing to move forward with a reduction of CO_2 emissions? This amendment calls only for stabilizing CO_2 emissions.

We in the United States are by far the largest emitter of CO_2 in the entire world. Every other industrialized country has committed to achieving stabilization of their CO_2 emissions at 1990 levels by the year 2000. We are the largest emitter and we are the only industrialized nation which has refused to stabilize emissions.

I know many, especially on the other side of the aisle, who say this is unthinkable. You better start thinking about it because it is going to happen. It may not happen today. This amendment may not be adopted today. It may not happen tomorrow. But it will happen. It may happen in June.

The President has a habit of being dragged, kicking and screaming, to a conclusion that other objective individuals reach more willingly and more readily.

There is an Earth summit scheduled in June in Rio de Janeiro. Virtually every nation in the world will be represented there, and the leader of every industrialized nation, every developed nation, every major power in the world has agreed to attend the Earth summit except one—President Bush. Every industrialized nation has agreed to targets and timetables except one—the one led by President George Bush. Every nation in the world has agreed that there should be a convention on climate change that controls the emission of greenhouse gases except the chlorofluorocarbons already controlled under the Montreal protocol, but again there is one exception to the worldwide consensus, and that is the United States of America, more specifically the administration of George Bush.

Every industrialized nation except the United States has agreed that there has to be participation by the industrialized world in an effort to make possible the acquisition of new technologies by the developing world that accommodate their understandable dreams of continuing economic progress but doing so in a way that does not bring about devastation of the environment.

The one exception, again, is the United States of America, which, because of President Bush's position, absolutely and resolutely refuses to join the consensus of the entire rest of the world.

This amendment, which I have just offered and which is now pending, would change U.S. policy, if it became law, and overrule the President's intransigence.

I said we are the only industrialized country to disagree with the stabilization of CO_2 emissions. There are two other countries that I know about, one in the OECD which is not technically classified as an industrial country and that is Turkey. The other nation I am aware of is Saudi Arabia, with which we have entered into a partnership in these international negotiations, and in some negotiations the United States appeared to raise an eyebrow and the Saudi Arabian delegate would stand up and make the arguments in favor of the Bush White House position.

But among industrialized nations we are the only one that has refused to take this position.

Madam President, earlier during the debate on the CFC amendment we heard a great deal about the reasons why this crisis came to pass, and we all heard how it really has been caused by emissions that have been going on for a number of years now.

Because of the nature of the global ecological system, it takes time for the buildup of gases to have an effect on the global environment. That is why chlorofluorocarbons, introduced years ago, are among those now creating the potential ozone hole above Kennebunkport.

It is the same thing where global warming is concerned. Extra emissions of carbon dioxide and other greenhouse gases from years past are building up in the atmosphere, and the ones we are releasing right now are creating problems that will continue for decades to come. So if we want to do something about it, the time to act is now.

I know the administration opposes this amendment. I know they have alerted their allies to oppose it. But, Madam President, we are facing a crisis. And while the gathering of 140 nations in the climate change negotiations offers us the possibility to take action to address this crisis, our intransigence threatens to cause those negotiations to completely collapse.

I have been following the UNCED process very closely, on a daily basis, and the climate change negotiations that are the centerpiece of the UNCED process, scheduled to reach its culmination in Brazil June 1 through June 12.

Madam President, the entire world knows that there is one reason why these negotiations are at an impasse. that one reason is the intransigence of President George Bush. Could it be the same person who described himself as the environmental President stonewalling the world on the most important environmental issue that we face in this country? It is hard to believe.

Some people say, well, there is some uncertainty about this. Yes. There is some uncertainty about it; not a lot. I will use an example that I used this morning, because it applies precisely here, as well.

There are scientists who work for the tobacco company who claim with a straight face that the evidence linking smoking with lung cancer is not persuasive. I represent 100,000 tobacco farmers. It is tempting sometimes to pretend that these self-interested scientists have some credibility. I also held the hand on my sister when she breathed her last breath. And anyone who has watched a death from lung cancer feels some anger when they hear any scientist claim there is no connection between smoking and lung cancer.

Madam President, I feel that way when I hear scientists who work for the status quo attempt to minimize the evidence, accepted by the consensus of the entire global scientific community, telling us that if we continue the emissions of carbon dioxide at present levels, we will surely create an ecological catastrophe that will cause future generations to wonder in amazement how we could have been so self-centered and so utterly irresponsible where the future of this planet is concerned.

It is tempting to believe that they are justified in reassuring us that we do not have to change. We can go right on taking 3,000 pounds of metal with us everywhere we go; we can go right on producing a per capita amount of waste in this country every 24 hours equal to the average body weight of every man, woman, and child in the United States.

Our global civilization now has the equivalent of a 10-pack-a-day habit. And it is tempting to pretend there are no serious consequences.

You know the old lines from the song by Dire Straits; I have quoted it before. I actually stole this line from the scientist, Carl Sagan. The Dire Straits' line goes like this: "Denial ain't just a river in Egypt."

Denial is a psychological strategy for avoiding the truth, because the truth may be uncomfortable or painful. And indeed the cause of global climate change is woven into the sinews of our civilization; CO_2 is the exhaling breath of industrial culture in our modern world.

But there is another interesting fact, Madam President. We have the capacity to stabilize emissions by the year 2000 at 1990 levels without any disruptive change. The studies have been done. They have even had discussions in the White House about this. It is not that big a deal to accomplish the minimal amount of change required in this amendment.

Now, the opponents will make it sound like a big deal, but it is really not. Efficiency, conservation, better design; these things are achievable right now. More efficient buildings.

Light bulbs alone; we all know the story about the light bulbs, the new light bulbs. They use one-tenth the amount of electricity as the ones we are using in here now. They last 10 times as long. They cause the emission of one-tenth the CO_2. They cost a little more on the front end. But because they last 10 times as long, they are much cheaper. Why do we not buy them? Because we are interested in the short-term only. We want to look at the next election, the next public opinion poll, the next budget cycle.

Do we give a damn about the next generation? Our Founders talked about posterity in an unembarrassed way. Mention posterity today in politics; it sounds corny.

The latest scientific assessment of the global scientific community, including the best scientists in the United States, is unequivocal in reaffirming the conclusions first reported 2 years ago. They rank their conclusions in separate categories.

The first category is things of which we are absolutely certain. The second category is things that we think are quite likely to occur. Then, the third category is a lesser degree of certainty.

The global scientific community is absolutely certain, it says, that the continued emissions of CO_2 at current levels will cause global climate change. We are threatening climatic changes greater than any we have seen in the entire history of human civilization.

What are the indicators? Maybe it is a coincidence that the temperatures in 1991 were the second hottest in recorded history. Maybe it is a coincidence that the hottest were 1 year earlier, in 1990, breaking all previous records. The tree ring data indicates that the last 50 years were the warmest 50-year period experienced in the last 160,000 years.

Did everybody see that hunter from the Stone Age, who was discovered in the Alps? Do you remember that, from 2600 B.C.? He had a stone ax with him, some jewelry, a little kit of things that he took with him on his trek over the mountains. Since 2600 B.C., he has been lying there. Why did we not notice him before? It is a long time for him to lie there. Why did we never see this guy before? Because the ice has not melted there for over 4,600 years.

Every mountain glacier in the entire world on the latitudes north and south of the Equator in the midrange are melting and retreating dramatically right now. The sea level is rising right now. The ice in the Arctic is thinning right now. The tundra surrounding the Arctic is warming right now; measured, verified. There has been a 2-percent recession of the Arctic ice cap in the last 10 years.

What about the predictions of more intense storms as a result of global warming? They measure storms by their intensity and there is a category called 100-year storms. They are expected to occur only once in a century. The United Kingdom was hit by five of them last year.

What about the bleaching of coral reefs all over the world simultaneously, a phenomena precisely correlated with peak temperatures?

There is another phenomenon that deserves some discussion hear, very briefly. Scientists at Columbia University's laboratory have now measured a sudden slowing in the activity of the ocean currents which drive the so-called conveyor belt that is powered by a sinking mechanism in the North Atlantic.

Just a word of explanation on that. The gulf stream comes north along the coast of North America and encounters the cold polar winds blowing across the North Pole and the Greenland icecap. That causes an enormous amount of evaporation, which is then carried by prevailing winds over to Europe and provides as much as one-third the amount of heat that Europe gets from the Sun each year. That is why Paris, being hundreds of miles north of New York City, is much warmer than New York City.

But after the evaporation takes place, what is left is dense, salty, cold water, because the salt remains. And it sinks rapidly at the rate of 5 billion gallons per second. It forms a deep, cold current then heading south underneath the gulf stream. It goes around the tip of Africa and surfaces eventually in the Pacific, becomes a warm current which comes back around the Earth and feeds into the gulf stream, completing a loop. It is all driven by this sinking mechanism in the North Atlantic which, in turn, depends upon the contrast of warm temperatures in the gulf stream with cold temperatures in the polar winds coming across the Arctic icecap.

One of the effects of global warming is to warm up the poles much more rapidly than the Equator. So the difference between the temperatures at the gulf stream and at the Arctic is diminished. The evaporation threatens to diminish. That is why they checked on this, and what they found was very troubling indeed.

What about sea level? There are a number of coastal communities and island nations that are threatened with being inundated. They come to these international meetings and plead for their continued ability to exist. There are now studies in the U.S. Government spelling out what it will take to relocate 60 percent of the population of Florida.

All of this sounds like what the comedian A. Whitney Brown once said is "a nature hike through the Book of Revelations." It is a little hard to take seriously, I understand that, because it sounds like a science fiction story. But the world scientific community and the U.S. scientific community have said, "Of this, we are certain: if we continue doing what we are doing today, we will cause catastrophic climate change."

So why do we not stop doing it? This amendment would not call for us to

take such a radical step, but what this amendment would say is, let us not make it any worse at a rate worse than we are making it right now. Let us try to stabilize the additional insults we are heaping on the global climate system at the levels we are at right now. I will make it plain. I think we have to have sharp reductions of CO_2. I believe, Madam President, whether or not it becomes a statement by this body here today in passing this amendment, that the limits of our political consensus here in the United States have reached the point where we can adopt a policy to stabilize emissions of CO_2 at 1990 levels by the year 2000.

Some argue that taking action will hurt our economy. I think that is a phony bill of goods. I think the truth is that there are important gains that we need to make if we are to remain a viable economic power in the world. The Japanese have taken on this pledge. Are they known for being soft-headed about economic competition? Have they just had a temporary lapse and are just being sloppy with this? How come they think this is something they ought to do?

Well, I think there are a couple of reasons. No. 1, it should be done for environmental reasons. No. 2, they understand that there is an enormous worldwide market opening up for the new products and processes and energy efficiencies that are going to be demanded in the future, and they want to be there first with the most.

There is a third lesson: The same mental tasks required to eliminate pollution, reduce unnecessary emissions, and operate a more efficient process are the mental tasks necessary to participate in the world quality revolution in business. That is why a lot of the companies that have made these commitments are finding that their profits go up, and their products achieve higher quality. The Japanese are not merely being altruistic. They recognize their self-interest in doing it, in business terms, as well as in environmental terms.

Analyses done by the Office of Technology Assessment at the Oak Ridge National Laboratory, and most recently by the EPA, demonstrate that we can actually improve our economy by becoming more efficient and reducing our carbon dioxide emissions. These analyses show that we can meet the stabilization target our trading partners are already committed to. Some argue that the European Community is all talk and no action. That is just not true, Madam President. The European Community is moving aggressively forward, even to implement an energy tax that will enable them to meet their commitment. The Japanese are moving forward aggressively, as well.

I will conclude with this statement, Madam President. I know the committee wants to say its piece on this. There is one final lesson of the ozone depletion crisis that we talked about this morning. That is something I referred to this morning as "nonlinearity," a big word that means changes in the environment do not always happen slowly and gradually; they sometimes build slowly toward a threshold, and then suddenly fall into a new pattern altogether. That is what happened to create the ozone hole.

That is also what can happen with global climate change. The entire pattern of world climate really is an engine for redistributing heat from the Equator to the poles, and coldness from the poles to the Equator. This redistribution of temperatures is accomplished through ocean and wind currents and cloud systems. It depends, most especially, upon the ratio of temperature at the Equator to the temperature at the poles. If we change that ratio enough, as we are now beginning to do, we risk a nonlinear change in the climate pattern with ocean and wind currents reorganized according to a new equilibrium. Our civilization is configured rather precisely to the climate pattern that has persisted with a very narrow band of change for more than 9,000 years, since the first cities appeared in Mesopotamia and the Levant.

If we change that pattern, the consequences for human civilization will be virtually unthinkable. If we want to prevent this we have to change what we are doing now. And the place to start is with stabilizing CO_2 emissions at 1990 levels.

I will be frank, I am going to come back and ask for reductions. But this is the starting place and although I have much more to say, as my colleagues might well imagine, I know they have their points of view to express as well, and so I will yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Madam President, I would say to my friend from Tennessee if he has more to say he might as well, because we are going to be on this bill ad infinitum with this amendment. This just will not get over in any near time. It will not get over in any near time because it is forgetful of America. It is forgetful of America.

It does not recognize and does not even recall that there is a geographical, there is a territorial, there is a population distribution differential between the United States and Japan which he could cite. It does not recognize that what is good greenhouse politics is bad news, catastrophic news for American workers.

I must point out that for a lot of us, at least, humans are part of the environment. Saying that the administration is not interested, as we speak the EPA Administrator Reilly is down in Brazil in negotiations, this night, on these topics and they are trying to do something quite different and a good deal more articulate than that program that the Senator from Tennessee suggests.

But let us begin by talking about the differences between the United States and some of our neighbors.

We begin with a huge resource base of low-cost coal, and a very efficient industry to extract it, and an advanced technology to burn it in clean and environmentally-suitable manners.

Europe, to the contrary, has a limited coal resource, Japan practically none. And Europe has to subsidize a very inefficient coal industry. So swearing off coal, which is essential for a freeze on CO_2 emissions, removes one of the aces from the United States energy part, a low card from Europe's hands, and no card at all from Japan's hand. And yet we sit here and moan about our inability to compete, put ever more burdens and ever more expenses on our economy, on our workers and, I would say to my friend, for no environmental consequence of benefit.

Environmental analyses such as America's Energy Choices, which suggest that carbon dioxide emission reduction is easy, is based on some assumptions that few would find easy to swallow.

There are long run estimates of energy use, for example the baseline which is no policy condition is much lower than the DOE estimate largely because they assume, and apparently hope, and are doing everything they can through their agents, to see slow economic growth.

Their analysis also assumes that the trend of the last 15 years toward a decline in manufacturing share of total output will continue, and apparently hope so. Apparently we feel that we can foist it off on other places at the expense of American jobs, but at no conditional improvement in our environment.

I note, too, that those who would reduce us to these levels and would support this amendment are among those who have voted against the nuclear energy package that the Senate just passed.

But I would ask if these environmentalists groups, America's Energy Choices, really hope for an America that continues to rely on imported manufactured goods, runs permanent trade deficits, and because we do not do it with clean coal technology, it will be done in countries that have not anything but the political commitment but not the political response, will have done nothing about cleaning up the environment, simply shifting it off of our conscience onto people who will be far less efficient, far less environmentally sensitive and will resist the efforts of industrial countries to force that down their throats.

They will go to the conference and they will all say things about global

warming, and they will say America you do it, you do it.

What is the difference? What is it that Mr. Reilly is down trying to do? Mr. Reilly is down trying to negotiate a balance of flexibility, assuming that the only greenhouse effect is not CO_2. There is no assumption—and the Senator from Tennessee's remarks that the only thing that worries us after the CFC's, which at least he had the grace not to say that the CO_2's were giving us AIDS and herpes and other awful diseases—the only thing that prevents the world from going to disaster is CO_2. That is a scientifically unsound, fraudulent statement. It cannot be sustained.

Mr. GORE. Will the Senator yield?

Mr. WALLOP. I will not yield. I listened for a better part of an hour and a half and I now insist, for less than that time, that my words be listened to.

Madam President, let me read a letter that is signed by Admiral Watkins, Larry Eagleburger and Michael Deland, the Chairman of the Council on Environmental Quality, a letter to the chairman of our committee, to Mr. JOHNSTON. It says:

DEAR MR. CHAIRMAN: The Administration strongly opposes the Gore amendment to S. 2166 which commits the United States to an international convention on climate change that stabilizes U.S. emissions of carbon dioxide at 1990 levels by the year 2000.

The Bush Administration actively seeks to conclude negotiations on a global climate change convention to address net greenhouse gas emission.* * *

Not just the one that has got the current scientific favor of the Senator from Tennessee, but greenhouse gas emissions.

Back to the letter:

Focusing exclusively on carbon dioxide emissions, however, is an inadequate response to climate change, will not invite participation in a global strategy from the maximum possible number of nations, and would have adverse economic consequences for the United States. Legislating such a goal would undermine the flexibility of the United States in an on-going negotiating process and infringe on the President's constitutional authority to conduct foreign policy.

At the most recent negotiation session, the United States proposed that each country analyze current and projected net greenhouse gas emissions and develop a package of actions to address projected global climate change.

Not an action that commits the United States and not themselves, but a package of actions dealing with the whole complexity of greenhouse gases.

Going back to the letter:

These analyses and measures would comprise a national climate action plan which would be open to public scrutiny and form the basis for further actions. This approach will respond effectively to the threat of potential global climate change, while also taking into account the scientific uncertainties and the economic challenges facing many nations.

Many nations, I say to the Senator.

* * * as well as each country's unique circumstances and available response options.

The Administration is working diligently to reach agreement on a climate change framework convention that is both environmentally effective and in the interests of the United States and the wider world community.

Signed James D. Watkins, Michael Deland, Chairman of the Council on Environmental Quality, and Lawrence Eagleburger.

Madam President, I ask that the letter from which I have been reading be printed in the RECORD.

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

FEBRUARY 6, 1992.

Hon. J. BENNETT JOHNSTON,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Administration strongly opposes the Gore amendment to S. 2166 which commits the United States to an international convention on climate change that stabilizes U.S. emissions of carbon dioxide at 1990 levels by the year 2000.

The Bush Administration actively seeks to conclude negotiations on a global climate change convention to address net greenhouse gas emissions on a comprehensive basis in time for such a convention to be signed at the United Nations Conference on Environment and Development in June 1992.

Focusing exclusively on carbon dioxide emissions, however, is an inadequate response to climate change, will not invite participation in a global strategy from the maximum possible number of nations, and would have adverse economic consequences for the United States. Legislating such a goal would undermine the flexibility of the United States in an on-going negotiating process and infringe on the President's constitutional authority to conduct foreign policy.

At the most recent negotiation session, the United States proposed that each country analyze current and projected net greenhouse gas emissions and develop a package of actions to address projected global climate change. These analyses and measures would comprise a national climate action plan which would be open to public scrutiny and form the basis for further actions. This approach will respond effectively to the threat of potential global climate change, while also taking into account the scientific uncertainties and the economic challenges facing many nations, as well as each country's unique circumstances and available response options.

The Administration is working diligently to reach agreement on a climate change framework convention that is both environmentally effective and in the interests of the United States and the wider world community.

Sincerely,

JAMES D. WATKINS
Admiral, U.S. Navy (Ret.), Secretary of Energy.

MICHAEL R. DELAND,
Chairman, Council on Environmental Quality.

LAWRENCE S. EAGLEBURGER,
Deputy Secretary of State.

Mr. WALLOP. Mr. President, any Chicken Little scenario is available to catch the evening news and make startling and terrifying sounds to the American public.

Talking about England's 500-year storms. If the Senator knew either history or the history of climate he will know that for the last 700 years, in the last decade of each century, England and Europe have had these humongous storms. The best thing that could be said is that apparently at the end of every century we are undergoing global climate change. Nobody really knows why that took place, but that it took place is uncontestable, but overlooked, and conveniently, by those who would provide the scenario that things that we are doing are responsible for things that God does in his own right.

Madam President, S. 2166 and its predecessor S. 1220 are not environmental bills, and they should not be. This sales pitch should have been put on the Clean Air Act, or it should be a pitch that is run through the Environment and Public Works Committee. What S. 2166 tries to do is specifically and systematically undone by what the amendment of the Senator seeks to do, and I would say for no net benefit to the global climate.

I would again suggest that those who are so primarily interested in the CO_2 might better have considered or reconsidered their votes on nuclear license, might better reconsider their votes as to where we are going under PUHCA.

But the most important part of what S. 2166 tries to do is to back out America's reliance on foreign energy and broaden the base and flexibility of America's energy use. What this does is take the biggest piece of America's energy resource and says, "Don't use it. It is gone, fellows. That is out."

So back to the Saudi drawing board. Back to Europe's solution. Only we do not have a subsidized coal industry that is of minimal consequence to rid ourselves of. We do not have the problems of Japan. But we do have an abundant supply of coal. We could have, if the green side of the legislating equation were to permit it, an abundant supply of nuclear power. We could have and may have, if the old utility side of things will permit it, competition in the generation of electrical power from natural gas which would help in this problem that we have.

But what I am suggesting is that the amendment of the Senator does two things very specifically and primarily to America, and that is cost jobs and eliminate the big balance of our energy resource that is brought into play by the uses of this bill. All the clean coal technology research, all the means by which we are going to do that, will simply be eliminated by the adoption of a convention such as the Senator from Tennessee suggests.

So I think that some of us do, though we were accused of not giving a damn about the next generation. And most of

us would say that one of the ways to give a damn about the next generation would be to assure that there will be one, and there will not be if we continue to take away jobs flexibility and economic might from the American economy and transfer it without a global climate change consequence to our competitors overseas.

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. WALLOP. I am happy to yield.

Mr. JOHNSTON. Madam President, I did not want to interrupt this speech, but it seems to me I sense a filibuster and kind of deal-breaker coming on with this amendment.

I personally have a great deal of sympathy and interest in this particular issue. We plan to have hearings on the subject of global climate change in the Energy Committee as soon as we can find some available time. I hope that the Senator from Tennessee would both attend those hearings and maybe make some suggestions as to who we might have to help further elucidate the issue.

But I hope that the Senator from Tennessee, having heard and further sensing the wall of opposition which we obviously see on the other side of the aisle, that I might persuade him to defer this issue to a more propitious day and time.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming has the floor.

Mr. WALLOP. I am happy to yield to the majority leader. I am happy to yield the floor.

Mr. MITCHELL. Madam President, I have a brief statement of no more than 3 minutes on the subject, before the Senator from Tennessee responds to the suggestion of the Senator from Louisiana.

Mr. WALLOP. Madam President, I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Madam President, if I might address myself to the Senator from Louisiana and the Senator from Tennessee, I wonder if it would be agreeable if I make a relatively brief statement on the subject matter prior to the response of the Senator from Tennessee.

Mr. JOHNSTON. Yes.

Mr. MITCHELL. Madam President and Members of the Senate, science warns that air pollution is warming the Earth's atmosphere, changing the planet's climate patterns. The way to reduce the rate of change is by curbing the emission of greenhouse gases.

Some argue that reducing such emissions will cost too much money. I respectfully disagree. Postponing our responsibility to protect our planet will cost us, our children, and our grandchildren far more.

Other industrialized nations have recognized their responsibility. The United States so far has not. The United States is responsible for emitting 20 percent of the world's carbon dioxide. Our society contributes more to global warming than any other nation. The administration places our Government alone among developed nations in not confronting and acting upon our national responsibilities.

Island nations face the prospect of being endangered by a rise in sea levels. Yet the administration will not act.

Our allies have committed to controlling greenhouse gases, setting an example for developing nations. Yet the administration will not act.

What will it take for the administration act?

This morning the Senate adopted another amendment by the Senator from Tennessee calling on the Administrator of the Environmental Protection Agency to accelerate the phaseout of chemicals that deplete the Earth's protective ozone layer.

The administration had opposed acceleration despite repeated and consistent data demonstrating that the ozone hole is more severe, more widespread, and more persistent than previously believed. Populated areas in the northern hemisphere are at risk. Children and crops in America are at risk in the summer.

The administration finally agreed to support the resolution which called for a phaseout "as early as possible." But the administration has provided no timetable for phaseout, no specific commitment on when this country will act.

Global warming is a similar threat to the health of the planet. Germany, Japan, Britain, France, Australia, and others have found that it is in their national interests to control emissions. It is our national interests, as well.

Madam President, I yield the floor.

Mr. WIRTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. WIRTH. Madam President, before the Senator from Tennessee responds, I just wanted to make a comment or two about this very important discussion and this extraordinarily important amendment.

I was in Toronto some years ago when scientists and policymakers from the industrialized countries and nations throughout the world met and established a goal of a 20 percent reduction in carbon dioxide emissions by early in the 21st century.

On my return, we had some extraordinarily important hearings in the Energy Committee, where the distinguished atmospheric scientist Dr. Hansen first came up with his very startling testimony on global warming and have had since then a number of hearings pointing out that the overwhelming scientific consensus is that the question, not if we are forcing global climate change, but how much, how fast, and where; not if the world is going to get warmer, but how much, how fast, and where.

We are going to be judged, Madam President, by future generations by how well we respond today to the potential global environmental crisis scientists are talking about. This morning we discussed the hole in the ozone layer and discussed how we in the United States, having discovered that, responded all too slowly, but we did respond.

This crisis of global climate change is coming at us, according to most scientific evidence and according to the consensus of what we heard, very, very rapidly, and we must start to respond now. I believe what the Senator from Tennessee has laid out as a goal makes a great deal of sense.

We are at a historic time, and that has become focused by the Brazil conference this June. I hope we in the United States do not duck what I think are our responsibilities.

We do have in this legislation right now a requirement for the Department of Energy to come back to us in recognition of this possibility and to come back to us and tell us how we might reach a goal of stabilization, without specifically setting that goal. We worked extensively with the Senator from Wyoming and with the distinguished chairman of the committee and all the members of the committee in coming up with the process that is in this bill now.

I wanted just to take a moment to tell the Senator from Tennessee, I agree with what he is attempting to do, and I think he has performed a great service. And, again, raising this issue to the point where it is in the bill now, we have probably done the best we can given the configuration of the committee, and the opposition we see on the floor. But let me say that we need to adopt stabilization—like all other industrialized nations have—as an initial goal.

I thank the Senator from Tennessee for his very fine effort, and I yield the floor.

Mr. WALLOP. Madam President, in the international deliberations concerning global climate change, the United States properly and aggressively has advocated enhanced international cooperation in developing and assessing scientific, technical, and economic information with respect to greenhouse gases and their effects on climate, the possible impact of such effects, and response measures that could be taken at national, regional or international levels.

Recent international global climate change include First, the July 17 "Economic Declaration" of the G-7 Economic Summit in London; second, section 1003 of S. 1220, the National Energy Security Act of 1991, as reported

by the Senate Committee on Energy and Natural Resources; and third, the formal position of the U.S. Government as set forth in its March 15, 1991, submission to the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change.

The United States also has endorsed and pursued so-called no regrets policies—those policies that contribute to the reduction of greenhouse gases but are beneficial for reasons other than climate change, such as energy efficiency. Examples include increased energy efficiency, better management of forests and other natural resources, reductions in the use of CFC's, and the lower atmospheric emissions that will result from the Clean Air Act Amendments of 1990.

The administration has pointed out that under current law and policy measures already undertaken, such as the Montreal Protocol to phase out CFC's, the Clean Air Act Amendments of 1990, and programs to plant more trees, the net greenhouse gas emissions of the United States in the year 2000 are expected to be equal to, or even below, the 1987 levels.

Madam President, global climate change is a very complex concept. The amendment of the Senator from Tennessee suggests that actions should be taken without consideration of their benefits or costs and without sufficiency of our scientific understanding. When the potential benefits of an action are poorly or minimally understood and cannot be justified under a no regrets policy, it would be a serious mistake to disregard the scientific uncertainties. The greater the economic costs or the smaller the benefits of a proposed action, the greater the need for full understanding of the social, economic, energy and environmental consequences.

Madam President, this position is consistent with other provisions of S. 2166, which supports a commitment by all nations to three principles:

First, a commitment to improved understanding of the causes of global climate change and the social, economic, energy, environmental, and competitive implications of any proposed actions to stabilize or reduce greenhouse gas.

Second, a commitment to further scientific research on global climate change to remove the scientific uncertainties that remain on the causes and consequences of global climate change and on the consequences of any proposed courses of action.

Finally, S. 2166 recognizes that each nation is responsible for establishment of it own national strategies to address the causes of climate change as well as courses of action to ameliorate any adverse effects. Moreover, such strategies are to be formulated with full public accountability for the elements of such a strategy.

What is clear, Madam President, is that the United States may well bear a disproportionate burden in the implementation of any global climate change agreement. The goals and schedules for limitations on greenhouse gas emissions that are currently being urged by certain of the trade competitors of the United States—European countries, Japan, and others—are unwise and may very well be discriminatory.

Before the United States commits itself to global climate change goals that go beyond a no regrets policy, the American people need to fully understand the economic, energy, social, environmental, and competitive implications of any strategies intended to stabilize or reduce greenhouse gases.

The need to investigate the feasibility of any such global climate change goals is reflected in S. 2166 before acting further, S. 2166 requires the Government to "investigate the feasibility and the economic, energy, social, environmental, and competitive implications of stabilization of greenhouse gases." It was the considered judgment of the committee that it would be premature, at this time, to adopt any new national energy policy intended to address global climate change other than a no regrets policy.

Madam President, S. 2166 supports strong leadership by the United States as crucial to achieving an agreement on a framework global climate change convention in time for the June 1992 United Nations' Conference on Environment and Development. S. 2166 also endorses a coordinated, international commitment to advancing scientific knowledge of global climate change and to the formulation of multinational strategies consistent with a "no-regrets" policy.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. I am prepared to respond to the chairman of the committee.

Before I do so, I would like to say a word about my colleague from Colorado who has just spoken. He and I have been partners in this effort for many years now and I want to acknowledge my debt to my friend. He has been a fantastic leader, showing tremendous foresight and determination and imagination. I treasure my working relationship with the Senator from Colorado. I treasure his commitment and dedication to this issue, and I am very appreciative of the kind words he just put into the RECORD here. I look forward to continuing to work with him very closely on it. We are of one mind on this question. I wish we could make more progress in convincing others to join with us. But we have barely begun to fight. I want to serve notice of that, as he has repeatedly.

Now, Madam President, just very briefly, I ask unanimous consent to have printed in the RECORD a rebuttal of the statements that were made earlier about the recent study, "America's Energy Choices." This is prepared by the Natural Resources Defense Council.

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

NATURAL RESOURCES
DEFENSE COUNCIL,
Washington, DC, February 6, 1992.

DEAR SENATOR: We are writing in response to Secretary Watkins' comments on global warming in his letter to Sen. Bennett Johnston of February 4th, which we understand has been distributed to the full Senate. We are dismayed that the Secretary of Energy has mischaracterized the results of our recent study, America's Energy Choices, as well as the recent report of the United Nations Intergovernmental Panel on Climate Change (IPCC).

In his letter, Secretary Watkins states that the IPCC has "significantly reduced" its projections of potential future warming in the Northern Hemisphere. We believe this misrepresents the recent IPCC update. In a report released on January 16, 1992, the IPCC stated under the heading "Our Major Conclusions," that "Findings of scientific research since 1990 do not affect our fundamental understanding of the science of the greenhouse effect and either confirm or do not justify alteration of the major conclusions of the first IPCC Scientific Assessment." In particular, the IPCC reiterated that "The evidence from the modelling studies, from observations and the sensitivity analyses indicate that the sensitivity of global mean surface temperature to doubling CO_2 is unlikely to lie outside the range 1.5 to 4.5°C." The IPCC did note that sulfates from fossil fuel emissions have a cooling effect that may be masking a significant part of the greenhouse warming in the northern hemisphere. While this could imply somewhat slower warming than previously projected in the near term, an accelerated warming is expected as sulfur dioxide emissions are reduced.[1]

America's Energy Choices examines a number of possible future energy scenarios; its most aggressive scenario demonstrates how a combination of widespread implementation of energy efficiency technologies and measures, along with rapid commercialization of renewable energy technologies, could substantially reduce U.S. fossil fuel consumption (and associated carbon dioxide emissions) over the next 40 years, at a net savings of over $2.3 trillion to energy consumers. Secretary Watkins' letter asserts that this scenario depends on an assumption of "slow economic growth and a continuing shift away from manufacturing."

In fact, our analysis is based on DOE's projections of future GNP growth, population growth, and energy prices.[2] The Secretary's assertion that the differences between our findings and those of the Administration's National Energy Strategy are accounted for by slower economic growth in our study is flat out false.

We do assume somewhat slower growth rates of industrial production than does DOE; many analysts have criticized DOE's projections as being too high. We believe there will be a continuing growth of the services sector relative to industry, and

[1] 1992 IPCC Supplement, January, 16, 1992. Page 3, lines 35–44.

[2] Because our analysis was begun before the NES was published we used GNP growth figures from the 1990 Annual Energy Outlook, which differ slightly from those in the NES.

within the industrial sector, a continuing shift away from energy-intensive materials processing towards fabrication and assembly. It should also be noted that our industrial growth rate and GNP assumptions apply to all of our scenarios, including the business-as-usual scenario, and therefore are not responsible for our estimates of significant energy and cost savings from utilization of energy efficiency and renewable energy technologies.

It is regrettable that DOE feels it must resort to distortion of both IPCC's scientific findings and America's Energy Choices' economic analysis in an attempt to justify its stance on federal energy legislation. This serves neither the public interest in responsible Congressional action on climate change and energy policy, nor DOE's own interest in restoring its credibility with the Congress and the public.

Sincerely,

DANIEL LASHOF,
Senior Scientist, Natural Resources Defense Council.

ALDEN MEYER,
Director, Climate Change and Energy Program, Union of Concerned Scientists.

Mr. GORE. I will revise and extend and elaborate my own remarks about a number of the points raised by my friend, the Senator from Wyoming, with respect to Japan and EC.

The statement that the European Community is just all talk and no action ignores the passage by the council of ministers of an energy tax, which is moving rapidly toward enactment by the entire EC.

With regard to methane, I agree methane is part of the problem. I will have an amendment in the future on methane as well. The administration has been approached by the EC to control methane. They refused to talk about that also.

As for targets and timetables, that is the method we used with the Montreal protocol on CFC's, targets and timetables. It is just the sensible way to proceed.

Finally, on the pain associated with stabilizing emissions, there are many studies—one by the EPA that shows how, through completely voluntary measures, with leadership, we could cut emissions by some 14 percent from current levels by the year 2000, accommodating continued economic progress.

It is a myth that the kind of measures embodied in this amendment are going to be disruptive to our economy.

Let me now come to the point in response to the suggestion by the chairman of the committee. The ranking Republican member of the committee and others on the Republican side of the aisle have made it plain that debate will be extended ad infinitum so long as this amendment is pending.

I would not like for this to be a partisan issue.

(Mr. AKAKA assumed the chair.)

Mr. GORE. I just noticed the change in the occupant of the chair.

This will not be a partisan issue. It really should not be, and I trust will not be, in essence. But I understand very clearly what the ranking member of the committee has said.

I also have a great deal of respect for the committee and my friendship with both the ranking member and the chairman of the committee. And the chairman has made a very generous proposal. Because I recognize we do not get anywhere if we are going to have a filibuster on this amendment, I will shortly pull it down. And then I will come back with it on another bill. I will keep coming back with it. We have to do this.

But because of my respect for the committee and my understanding of the situation, I will, at this point, in keeping with the suggestion of the chairman and the clear statements by the ranking Republican member, I do now withdraw the amendment.

The PRESIDING OFFICER. The Senator has that right. The amendment is withdrawn.

The amendment (No. 1589) was withdrawn.

Mr. JOHNSTON. Mr. President, I give my special thanks to the Senator from Tennessee who has performed with Presidential timbre this evening.

Mr. SEYMOUR. Mr. President, Senators CRANSTON, WELLSTONE, and I had intended to offer an amendment, which I will ask to be submitted for the RECORD, to allow the State of California to go forward with what is known as Drive + legislation. California's legislation establishes a system of fees and rebates, also known as "feebates", to reward the purchase of cars that are both clean and efficient. Although I believe that the State of California can go forward with Drive + even without my legislation, in an attempt to ensure that the State not have to go through a lengthy court battle to affirm this right I was hopeful my clarifying language would be passed by the full Senate.

I fully understand the delicate nature of the negotiations that have allowed the energy bill to be considered by the full Senate. In an effort to speed the passage of this much needed measure, my colleagues and I are willing to forgo offering the amendment at this time.

Mr. JOHNSTON. Mr. President, I thank the two Senators from California and my distinguished colleague from Minnesota, and greatly appreciate their efforts to ensure that S. 2166 passes the Senate in a timely fashion. I, too, feel that State feebates legislation is an interesting idea and worthy of consideration when the Senate turns its attention to improving our Nation's corporate average fuel economy standards or other appropriate legislation.

Mr. SEYMOUR. I ask unanimous consent the amendment be printed in the RECORD.

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

On page 144, between lines 17 and 18, insert the following new section:

SEC. 6112. STATE FUEL EFFICIENCY PROGRAMS.

(a) IN GENERAL.—Subject to subsection (b), and notwithstanding any other provision of law, a State may adopt and enforce laws relating to the fuel economy of motor vehicles that provide for—

(1) increased fees for vehicles having a fuel economy below a specified level;

(2) the purchase and destruction of vehicles described in paragraph (1); and

(3) fee rebates and other incentives for vehicles having a fuel economy above a specified level.

(b) LIMITATION.—A State may not adopt or enforce a law that prescribes a fuel economy standard with which manufacturers of motor vehicles must comply.

Mr. JOHNSTON. Mr. President, I will shortly submit a colloquy between myself and the distinguished Senator from Michigan [Mr. RIEGLE] on the subject of transmission access, which is a vitally, vitally important issue.

Senator RIEGLE and I have come to a meeting of the minds on that very important subject represented in this colloquy. Before I submit it, I wanted to give a chance to the Senator from Wyoming to ask any questions he may have about it because it is such an important matter.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, I thank my colleague and my chairman. The colloquy discusses the very difficult issue of transmission access. There is a statement in this I just would wish the Senator might be able to clarify because the sentence that precedes it, "It is in the interests of consumers and the public generally for transmission owners to provide transmission access and use on rates and terms that are nondiscriminatory compared with the transmission access available to themselves."

Then the sentence I was asking about, "This will be a formidable but achievable goal for the conferees."

It is my understanding that refers to the whole bulk of that paragraph, rather than the specifies of the sentence that precedes it?

Mr. JOHNSTON. As the sense of the colloquy points out we want to deal comprehensively with transmission access in the conference. That means addressing the desires of those who, for example, want to protect native load; those who want to do away with what they call cherry picking of retail customers. There is a concern that transmission access going on today by FERC and by some public utility commissions involves their concern with that overreaching.

The concern of others is what I think is the commendable goal of having a

free and open transmission access system.

So when I say it is a formidable goal, it is a formidable goal to deal comprehensively and successfully with all of these concerns in the conference. And this issue will definitely be in the conference and we will, without committing ourselves to do anything specific, you know—we are not going to say we are going to be for this amendment or for that amendment—we have to address all of those concerns so the achievable goal is to deal successfully with all of those concerns that we mentioned.

So the answer is, yes, that clause is defined by all of that which precedes it.

Mr. WALLOP. So it is in fact a recognition that the issue will come back but not a commitment to any particular resolution of that issue? It neither says that we will have transmission access or will not, in any form?

Mr. JOHNSTON. It is a commitment to deal in good faith and comprehensively with the issue.

But we have not signed on to any solution. That is what the conference is all about.

Mr. WALLOP. I thank my friend. It will not be up to me to object to it, anyway. I thank the Senator for the clarification and again will reiterate my own strong feelings about transmission access, a potential catastrophe for this bill we have worked so hard on together.

Mr. JOHNSTON. I thank Senators for withholding transmission access amendments on this bill at this time. It is hard to deal with one aspect of it without trying to deal with the whole thing, and that is why we wanted to get it into conference and not try to piecemeal it here. We would be here for weeks if we did. I am particularly grateful to Senator RIEGLE for allowing us to do so.

Mr. RIEGLE. Mr. President, the purpose of title 15 is to promote fair competition in order to reduce electricity rates for customers. Some proponents of PUHCA reform believe that fair competition will require that all wholesale competitors who can pay for the service should have fair access to the transmission system. They argue that the ability of power generators to get their power to market improves the development of a competitive wholesale power market. The bill currently pending before the Senate does not contain provisions which open up the transmission system. Does the Chairman know we can expect these issues to be dealt with in conference?

Mr. JOHNSTON. In response to the Senator's question, I certainly recognize the power of the argument that it is in the best interests of consumers as a whole for there to be a flexible and predictably open transmission system. Indeed we have seen and will continue to see rapid evolution toward greater transmission access through actions by the FERC, State public utility commissions, and voluntary open access filings by utilities. I have, however, indicated my strong resistance to transmission access amendments to S. 2166 on the Senate floor. Were we to open up the bill to access amendments I have no doubt that we would be here for days on end. The subject of transmission access has tremendous complexity, both technical and economic, both subtle and overt.

The House energy bill will certainly contain mandatory transmission access provisions, and this will therefore be a matter that the conference must deal with. The advantage of dealing with transmission in conference is that we can do so comprehensively. In conference we will deal with the desire of some for non-discriminatory and procompetitive wholesale transmission rates and access at just and reasonable rates. We will also deal with the concerns of others that there be appropriate protections concerning retail wheeling, and maintenance of the reliability and coordination that our utility system enjoys today. It is in the interest of consumers and the public generally for transmission owners to provide transmission access and use on rates and terms that are non-discriminatory compared with the transmission access and use available to themselves, their affiliates and others. This will be a formidable but achievable goal for the conferees. In any case, it is clearly preferable to the piecemeal approach to transmission that would result if we begin to deal with amendments on the Senate floor.

Mr. RIEGLE. Would it be the Senator's intention that any transmission access provisions the conference adopts will be in addition to all existing rights under statutes, contracts or otherwise?

Mr. JOHNSTON. Yes.

Mr. SPECTER and Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. JOHNSTON. Mr. President, I know the Senator from Pennsylvania has very patiently waited.

Mr. SPECTER. Only for 2 hours.

Mr. JOHNSTON. I had an agreed-to amendment which is important, but I will yield.

Mr. SPECTER. I will yield to the distinguished manager for that.

Mr. JOHNSTON. I thank the Senator.

Mr. President, I will send an amendment to the desk on behalf of Senators RIEGLE, DODD, KERRY, BRYAN, LEVIN, DOMENICI, and BOND which deals with protection against abusive affiliate transactions, deals with the authority of State PUC's to preapprove contracts, puts restrictions on reciprocal arrangements, deals with just and reasonable sales, and access to books and records.

Mr. President, I am advised that this is not cleared at this time, so I will withhold and yield to the Senator from Pennsylvania.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I would now like to turn to discussion of certain aspects of the provisions of the pending legislation which amend the Public Utility Holding Company Act of 1935.

This is a very complex issue where constituents of mine in Pennsylvania are on both sides of the issue. There are supporters defending reform of the Public Utility Holding Company Act who believe that by exempting independent power producers from the regulatory requirements of the act, there will be more competition; and there are opponents who are very concerned about serious potential consequences which may result in a category of stranded investments where large industrial and commercial customers may be able to leave the investor-owned utility system to avoid paying fixed costs, such as costs required to provide reserve capacity, maintain important low-income customer programs, taxes, research such as clean coal technology projects, compliance costs associated with the Clean Air Act. If this were to occur, the remaining customers would be left behind to pay for these stranded investments and programs.

There is also concern expressed by a considerable constituent body of mine that there will be duplication costs, which means that investor-owned utilities would be required to make electric service available to every customer within the service area, but at the same time customers would have the ability to jump on and off the system without efficient planning for future generation and transmission requirements.

This could lead to a costly duplication of services as investor-owned utilities remain obligated to provide electric services to these customers.

There is also a considerable concern about utilities being forced to build additional transmission lines much sooner than normally required because existing lines would be used for reserve for the benefit of others.

The construction of new lines is a complicated matter, Mr. President, as illustrated by efforts now to construct new lines in Pennsylvania, these plans raise the serious issue of whether there is increased exposure to the carcinogenic effects of electromagnetic fields and another very severe complication.

There have been a wide variety of studies as to what the impact of this reform would be.

I turn now to what might be categorized as independent conclusions, although that is always suspect in the analysis of judgments and in the legislative context, and these purport to be independent judgments.

In 1989, the Congressional Office of Technology Assessment in Electric Power Wheeling and Dealing, Technological Considerations for Increasing Competition, concluded that:

The cost, benefits, and impacts of competition are very uncertain. The benefits of competition are speculative and difficult to quantify, particularly from a national perspective. Rapid change will entail the greatest risks.

Competition in general is highly desirable. That is the laissez-faire free enterprise system. But in the context of the public utility holding companies, there are very substantial uncertainties. More recently, the Congressional Research Service issued a report on "electricity in a new regulatory order" saying:

Comprehensive regulatory reform of the electric power industry is neither desirable nor practical without a clearer vision of what form the industry should take. A major overhaul of regulation would involve significant risks to the present stability of the available and reliable electric power with little guarantee of improved services or lower costs.

There was another conclusion reached by the North American Electric Reliability Council, an independent organization formed by the electric utility industry in 1968 to promote the reliability of the electric supply system in North America. That study cautioned, in its 1990 reliability assessment, that "reliability," referring to the electric system, "should not be compromised for short-term economic benefits. In the long run, shortsighted approaches could result in severe economic penalties to the customer and even endanger public well-being."

Mr. President, these are some of the concerns in a capsulated form which have been called to my attention, as I say, by a considerable constituent bloc in Pennsylvania. The constituent bloc opposed to the amendments in this act point to the provisions of title 15, section 79(z)(4), which places a requirement on the Securities and Exchange Commission to conduct certain studies and investigations, which, as I understand it, have not been performed.

My statements, Mr. President, do not come with the detailed knowledge of the committee members because I have not been on the committee. When this bill came to the floor I was contacted by my constituents. I am making an effort to familiarize myself with the intricacies of a very complex subject.

So my statements are based upon the representations of the materials which have been made available to me over a relatively short period of time.

But referring to title 15, section 6779(z)(4), there is an issue concerning the obligations of the Securities and Exchange Commission. This I do know because it is in statutory form:

The Commission is hereby authorized and directed to make studies and investigations of public utility companies, the territories served or which can be served by public utility companies, and the manner in which the same are or can be served to determine the sizes, types and locations of public utility companies which do or can operate most economically and efficiently in the public interest, in the interest of investors and consumers, and in the furtherance of the wider and more economical use of gas and electric energy.

Mr. President, the information provided to me represents that there has not been that statutorily mandated study by the Securities and Exchange Commission. One of the requests made of me was to have the title on reform of the Public Utility Holding Company Act stricken so that there could be a study by the Securities and Exchange Commission and a determination made as to the impact of the reforms.

I had been informed and have seen the letter from the Securities and Exchange Commission Chairman representing that the Securities and Exchange Commission approves of the amendments of the proposed legislation, but, notwithstanding any such approval, there still has not been, as I understand it, the kind of studies and investigations mandated by the statute.

Mr. President, I would like inserted at this juncture the text of a proposed amendment which I would like to have in the CONGRESSIONAL RECORD so that it may be read by my colleagues. The amendment would purport to strike the existing provisions of the Public Utility Holding Act and call for a study.

Then, Mr. President, I would like to have inserted at this juncture in the RECORD another possible amendment which would call for a study of public utility companies by the SEC. The SEC would then be required to report back to the Congress with the provisions of the pending bill not taking effect until Congress has had 90 days to review the report.

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

On page 379, strike all beginning with line 22 through line 14 on page 394, and insert the following:

"TITLE XV—STUDY OF PUBLIC UTILITY COMPANIES, REPORT AND RECOMMENDATION

"The Commission is hereby directed to make studies and investigations of the types and structure of public utility companies, including such selling electric energy solely at wholesale, which in its judgment can operate most economically and efficiently in the public interest and in the interest of investors and consumers; and upon the basis of such studies and investigations shall submit during the First Session of the 103d Congress to the Senate Banking, Housing and Urban Affairs Committee and to the House Energy and Commerce Committee its report and recommendations as to the type and structure of public utility systems which can best promote and harmonize the interests of the public, the investor, and the consumer: *Provided*, That in the conduct of such studies and investigation the Commission shall consult with Federal, State, and local utility regulatory agencies: *And provided further*, That such studies and investigations include conservation, including demand side management."

On page 379, on line 22, add the following:

SEC. 15101. STUDY OF PUBLIC UTILITY COMPANIES, REPORT AND RECOMMENDATION.

Immediately upon enactment of this bill the Securities and Exchange Commission is hereby directed to study the impact of the provisions detailed in sections 15102–15109 of this Act on the electric utility industry including studies and investigations of the types and structure of public utility companies, including such selling electric energy solely at wholesale, which in its judgment can operate most economically and efficiently in the public interest and in the interest of investors and consumers; and upon the basis of such studies and investigations shall submit within nine months to the Senate Banking, Housing & Urban Affairs Committee, the Senate Energy and Natural Resources Committee and to the House Energy and Commerce Committee its report and recommendations as to the type and structure of public utility systems which can best promote and harmonize the interests of the public, the investor, and the consumer: *Provided*, That in the conduct of such studies and investigation the Commission shall consult with Federal, State, and local utility regulatory agencies: *Provided further*, That such studies and investigations include conservation, including "demand side management": *And provided further*, That the remaining sections of this title not take effect until the report be before the above mentioned committees for 90 days.

Mr. SPECTER. Mr. President, I put these in the CONGRESSIONAL RECORD because it may be that I would want to offer these amendments at a later stage in the consideration of this legislation.

As we proceed here at 6:37 on Thursday evening, I do not know what the history of this bill will be, whether we will finish it tonight, or whether we will finish it tomorrow or what will happen. But it may be that we will proceed over the recess period and pick the bill up again when we return on February 18. If that would occur, then there would be an opportunity for further consideration of these possible amendments.

It may be, Mr. President, that there will be other amendments offered. There has been some discussion of an amendment which would provide that there would be jurisdiction in the State public utility commissions to have certain regulatory authority over any new company which had less than 35 percent equity or higher than 65 percent debt. As the legislative process unfolds, I do not know precisely what will occur, but I do believe that the issues involved require more analysis and more thought.

At best I can sense the mood of this body, it is likely that changes in the text of the pending legislation are unlikely. But we will have to see how that develops. And when others in the body have a chance to examine these

possible amendments, we will have an opportunity to examine them further as this legislative matter proceeds.

I ask unanimous consent at this point, Mr. President, to have printed in the RECORD the list of constituent interests opposed to the pending legislation, and also a letter from the Pennsylvania Rural Electric Association in opposition to the pending amendments to the Public Utility Holding Act.

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

PENNSYLVANIA RURAL ELECTRIC ASSOCIATION,
Harrisburg, PA, February 1, 1992.

Hon. ARLEN SPECTER,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR SPECTER: The Pennsylvania Rural Electric Association represents thirteen rural electric utilities, called "cooperatives", that serve over 600,000 rural Pennsylvanians in half the geographic area of the state.

Together with PP&L and Philadelphia Electric Company, our Pennsylvania electric utilities serve the great majority of Pennsylvania households and businesses.

We joint these companies in strong opposition to changes in the Public Utility Holding Company Act of 1935, proposed in the name of "reform", that could once again lead to creation of complex, far flung and diverse corporate structures by large holding companies designed to evade government oversight, increase their control of the electricity market, and charge unfairly high electric rates.

Reliability of electric service could also be affected by unduly relying on many small independent power producers (IPPs) for electricity. They do not have the economies of scale, nor would they necessarily have the experience and know-how to reliably produce low cost power, nor would they necessarily be required to avoid risky financing arrangements.

All PUHCA "reform" really means is that the relationship between holding companies and the IPPs they create will escape regulation by the Securities and Exchange Commission and possibly by state public utility commissions. Consumers would pay the higher electric bills that could result from such deregulation.

When this measure comes to the Senate floor as part of the National Energy Strategy (S. 2166), we urge you to offer an amendment that would require the Securities and Exchange Commission to conduct a study of the ramifications of such drastic changes in a law that has worked so well for so long. This is not the time to undertake major experiments in an industry that is performing well.

Thank you in advance for your consideration of this important matter. I regret that our President, Jesse C. Tilton III, is not able to join our colleagues in a meeting with you, as he is attending a long-scheduled meeting in California.

Sincerely,

WILLIAM E. MOWATT,
Vice-President, PREA.

PUHCA "REFORM"

(By the Pennsylvania Rural Electric Association [PREA])

THE PROBLEM

Proposals have been made to amend the Public Utility Holding Company Act of 1935 [PUHCA] to allow businesses, including public utility holding companies, to create unregulated subsidiaries to make and sell wholesale electricity. Many fear this will cause the return of anti-consumer and anti-competitive practices the law stopped when it was enacted.

BACKGROUND

In 1935, the Congress, under the personal leadership of Sam Rayburn, passed the Public Utility Holding Company Act to protect the public against the anti-competitive and fraudulent business practices of large public utility holding companies.

Before PUHCA was enacted, unregulated utilities could charge whatever they wanted for electricity, even though consumers are held "captive" by monopolistic utilities—consumers can't shop around for a better deal, so they have to pay the going rate. Holding companies could cut sweetheart deals with their own unregulated subsidiaries—on the sale of property and goods, for instance—so the unregulated subsidiaries could boast low costs and high profits that directly benefit investors instead of captive ratepayers. Holding companies could also get involved in all kinds of non-utility enterprises that increase the risk for the entire company, including their electric utilities. And the holding company could disguise all these activities with complex corporate structures, the pieces of which would be scattered around the country, out of the reach of state regulators.

Under PUHCA, regulated utilities have to pass along the savings from low costs to ratepayers in the form of lower electric bills. Simpler corporate structures, focused only on providing electricity to consumers at the lowest possible cost, are required so regulators can insure that the law works to protect both consumers and investors.

NATIONAL ENERGY STRATEGY

Congress is trying to fashion a "national energy strategy" to make America less dependent on foreign oil. Everyone agrees that we should try to use our own resources more wisely. Increasing the efficiency of the electric utility industry will save our energy resources.

The proponents of PUHCA "reform" claim that encouraging competition in the wholesale electricity market will make the entire industry more efficient and result in lower electric bills for retail utilities and their customers. The way to increase competition, they say, is to allow lots of new subsidiaries, called independent power producers (IPPs) or exempt wholesale generators, around the country to make and sell wholesale electricity, unfettered by the consumer protections of PUHCA. Any business—not just electric utilities—could set up any number of IPPs anywhere in the country.

PUHCA "reform" advocates point to the limited success of existing IPPs and some small cogeneration power plants that use mining and steelmaking wastes to produce wholesale electricity. These facilities are not necessarily comparable to the unregulated facilities envisioned by PUHCA "reform" advocates. IPPs created by large public utility holding companies today can only operate in the home state of the holding company and are regulated by state public utility commissions. Cogeneration power plants are also treated differently under the Public Utility Regulatory Policies Act of 1978—their size is limited, state regulators oversee their activities, and nearby electric utilities are required to buy their wholesale electricity.

PUHCA "reform" really means that the relationship between holding companies and the IPPs they create will escape regulation by the Securities and Exchange Commission and by state public utility commissions. Retail consumers—households and businesses—would pay the higher electric bills that could result from such deregulation.

THE PREA POSITION

PREA represents fourteen rural electric utilities, called "cooperatives," that buy much of their electricity from other utilities that make and sell wholesale electricity. Along with cooperatives across the country, electric utilities owned by municipalities, state regulators, environmentalists and consumer groups, we are very concerned that the changes to PUHCA described above could once again lead to creation of complex, far flung and diverse corporate structures by large holding companies designed to evade government oversight, increase their control of the electricity market, and charge unfairly high electric rates.

Reliability of electric service could also be affected by unduly relying on many small IPPs for electricity. They do not have the economies of scale, nor would they necessarily have the experience and know-how to reliably produce low cost power, nor would they necessarily be required to avoid risky financial arrangements.

Because electric utilities are natural monopolies, consumers can't just switch from one company to another when electric bills go up or service deteriorates. So the government has spent the last half century looking out for consumers by regulating the electric utility industry. This protection should continue.

MAY 1991.

Some twenty-one electric utilities serve 98 percent of all Pennsylvania households: Only the two New Jersey-owned utilities urge S 1220's title XV, exempting new power supply subsidiary Corporations from the "Public Utility Holding Company Act."

"*Whereas*, Several proposals have been made in Congress which would exempt independent power producers [i.e., with voting securities wholly-owned by parent corporations,] from the provisions of the Public Utility Holding Company Act, PUHCA; and . . . Opponents of these proposals believe that exempting . . . [them] will make possible the type of abuses that led to the enactment of the Act in 1935; that among these abuses may be self-dealing, pyramiding of costs, and improper schemes among private power companies, all of which work against the interests of consumers and are not in the public interest, therefore, be it *Resolved*, By the Pennsylvania Rural Electric Association, that we urge Congress to resist proposals to amend PUHCA to exempt" Public Utility Holding Companies' new power supply subsidiaries.[1]

Electric utilities serving Pennsylvania's households

	Number
1. Adams Electric Co-op, Inc	19,706
2. Bedford Rural Electric Co-op, Inc	7,086
3. Central Electric Co-op, Inc	19,965
4. Claverack Rural Electric Co-op, Inc	14,069
5. Duquesne Light Company[1]	518,322

[1] Absent the '35 Act, holding companies exercised "voting control over existing utilities and . . . deprived them of all semblance of independence": They "furnished all the revenues and a large percentage . . . were drained off, in numerous instances, by exhorbitant service and construction fees . . . to the parent holding company," and "what was left of the earnings had to percolate upward" to the holding company, also, 94 "U. Pennsylvania Law Rev." 150.

	Number
6. Metropolitan Edison Company[2]	382,362
7. New Enterprise Rural Electric Co-op, Inc	2,361
8. Northwestern Rural Electric Co-op, Inc	15,196
9. Pennsylvania Electric Company[2]	481,412
10. Pennsylvania Power Company[2]	119,530
11. Pennsylvania Power & Light Company[2]	1,023,543
12. Philadelphia Electric Company[2]	1,320,126
13. Somerset Rural Electric Co-op, Inc	10,011
14. Southwest Central Rural Electric Co-op, Inc	17,929
15. Sullivan County Rural Electric Co-op, Inc	4,405
16. Tri-County Rural Electric Co-op, Inc	14,506
17. United Electric Co-op, Inc	14,726
18. United Gas Improvement Corporation	52,171
19. Valley Rural Electric Co-op, Inc	15,824
20. Warren Electric Co-op, Inc	7,806
21. West Penn Power Company[2]	554,716
Total Pennsylvania households, 1989–90	4,615,772

[1] A Public Utility Holding Company, or owned by one: The "Public Utility Holding Company Act" of 1935 restored confidence in electric utility securities, 94 "U. Pennsylvania Law Rev." 148.

[2] Wholly-owned by New Jersey's "General Public Utilities" holding company Corporation.

Mr. SPECTER. Mr. President, while submitting those, I say at the same time that there are very significant constituent interests in Pennsylvania who like the bill. I am not in a position to say categorically what ought to follow. That is why I am submitting the possible idea of the study by the Securities and Exchange Commission, which is, as I understand it, mandated by the statute.

I have a number of other points to make. If the distinguished manager would like to comment at this point on what I have said, I would be glad to yield without losing my right to the floor at the conclusion of the manager's comments.

Mr. JOHNSTON. Mr. President, I simply wanted to thank the Senator for being patient and waiting this afternoon, and for helping us. When he is finished with his remarks, we are ready to move on to other amendments.

ENERGY CONSERVATION MEASURES IN THE ENERGY BILL

Mr. SPECTER. Mr. President, I commend the managers of the energy bill for including in this legislation a number of important provisions which promote increased energy conservation and greater efficiency in our use of available energy resources. I believe that unless this country strives to control its demand for energy, we risk putting our economic welfare and security at the whim of the countries that will be controlling future energy markets.

On January 31, 1991, I introduced S. 326, legislation designed to establish a comprehensive energy program. Many of the conservation programs I set forth in S. 326 have been incorporated into S. 2166, the National Energy Security Act of 1992. I would like to briefly highlight a few of the most significant of these conservation programs.

Mr. President, the menu of conservation ideas I proposed in S. 326 and which are included in this bill were not conceived as a blueprint for a comprehensive energy policy, instead they were designed to encourage adoption of practical conservation measures that could bring about significant near-term results. I discussed the concept for this legislation in November 1990 with George Frampton, the president of the Wilderness Society, who observed that it was unfortunate that a number of sensible and potentially effective energy conservation ideas have either gone unnoticed or have been coopted by larger, more controversial legislative initiatives. Accordingly, in the conservation proposals I set forth in S. 326 I sought, with the assistance of the Alliance to Save Energy, which has also worked very closely with Senator WIRTH's staff on this issue, to cull the sensible energy conservation proposals from other legislation, broaden its scope, and combine it with a number of new ideas targeted at the Federal Government's energy consumption, the utility industry, the transportation sector, and Federal housing and commercial building regulations.

Mr. President, the Federal Government is the largest single consumer of energy in the United States. Therefore, it seems reasonable to me that any strategy to implement more efficient energy consumption practices should begin with the Federal Government. The Alliance to Save Energy estimates that in 1989 industry averaged $7,000 in expenditures per building on energy conservation while the Federal Government averaged only $90 per building. The fact of the matter is that Federal agencies have simply been neglecting the much needed modernization and improvements required to achieve greater energy efficiency at Federal facilities. I am therefore pleased that the Energy Efficiency title of S. 2166 would require the Secretary of Energy to issue a Federal building energy code to assure that all new Federal buildings include energy efficiency measures that are technically feasible and economically justified.

Additionally, I am pleased that the energy bill includes provisions I introduced in S. 326 which require Federal agencies to install energy efficiency improvements with payback periods of 10 years or less. The bill also promotes shared energy savings contracting, which S. 326 strongly encourages as an energy saving measure to be implemented by all Federal agencies. Shared energy savings contracts work by encouraging the contractor to incur the costs of implementing energy conservation measures at Federal buildings and facilities in exchange for a share of the savings once these measures take effect, thus allowing Federal agencies to achieve their energy conservation targets.

This legislation, Mr. President, like S. 326, also includes measures to establish home energy rating systems and finance incentives to encourage construction of energy efficient homes. The Alliance to Save Energy, of which my distinguished colleagues Senator WIRTH and Senator JEFFORDS are cochairs, recently did a survey in which they determined that 89 percent of those polled supported a minimum Federal efficiency standard for homes. In addition, I strongly support the provision in title VII that establishes an energy efficiency rating system for all new residential, commercial, and industrial buildings. While S. 2166 requires all buildings receiving Federal mortgages to meet or exceed the Federal efficiency codes, I believes the bill could be strengthened by adding minimum energy efficiency standards for federally subsidized housing.

Finally, I commend the decision to include provisions from S. 326 which will assist ratepayers in making intelligent home improvement purchases, by requiring the Secretary of Energy to support the development of energy ratings and labels for windows and window systems as well as including lamps, commercial air conditioning, and heating equipment in the Department of Energy's appliance energy efficiency program.

Mr. President, with the inclusion of these and other energy conservation measures in the National Energy Security Act of 1992, I believe we will be making significant strides toward controlling our excessive demand for energy.

Mr. President, I am pleased that a number of the provisions which were included in my measure have been incorporated in the bill.

There are two provisions which I had included in Senate bill 326, which have not been included in this bill. I had notified the managers of the bill that I did intend to offer these amendments, and I want to comment about them briefly. I will not offer them at this time, but I ask unanimous consent that they be printed in the RECORD, because I will pursue them at a later date.

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

It is the sense of the Senate that Section 162 of the Internal Revenue Code of 1986 (relating to trade or business expenses) should be amended—

(1) by redesignating subsection (m) as subsection (n); and

(2) by inserting after subsection (1) the following new subsection:

"(m) NO DEDUCTION FOR PARKING EXPENSES UNLESS EMPLOYER PROVIDES CASH ALTERNATIVE.—

"(1) IN GENERAL.—No deduction shall be allowed under this chapter for any amount paid or incurred by an employer in connection with the providing of a parking subsidy to any employee unless the employer provides the parking subsidy pursuant to an arrangement under which the employee may elect, in lieu of a parking subsidy, to receive cash or a mass transit, car pool, or van pool subsidy in an amount equal to the fair market value of such parking subsidy.

"(2) DEFINITION.—For purposes of this subsection, the term 'parking subsidy' includes the direct and indirect cost to an employer of providing a parking space to an employee, not including any amount paid by the employee."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning with the third taxable year beginning after the date of enactment of this Act.

At the appropriate place in the bill, insert the following:

SEC. . REMOVAL OF CERTAIN MODEL YEAR VEHICLES FROM USE.

Title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001 et seq.) is amended by adding at the end the following new section:

REMOVAL FROM SERVICE OF CERTAIN MOTOR VEHICLES

"SEC. . (a) Prior to the expiration of the 90-day period following the date of the enactment of this section, the Secretary shall issue such regulations as may be necessary to establish and implement a program encouraging the removal from use and the marketplace of motor vehicles manufactured prior to model year 1980.

"(b) Such program shall provide that any motor vehicle dealer who receives, as a trade-in on the sale by such dealer of a new motor vehicle, a motor vehicle of a model year prior to model year 1980, may remove such motor vehicle from use and the marketplace.

"(c) Such regulations shall further provide that upon certification by the motor vehicle dealer to the Secretary that the engine block and the chassis of the motor vehicle have been removed from use and the marketplace and destroyed in accordance with such program, the manufacturer of the new motor vehicle shall receive a credit to its corporate average fuel economy. Such credit shall equal the difference between the fuel economy of the new motor vehicle, and the motor vehicle removed from use and the marketplace.

"(d) Regulations under this section shall require proof from the motor vehicle dealer that the motor vehicle was destroyed in accordance with the regulation, and that the vehicle's identification number was removed from the registration list of the appropriate State or States.

"(e)(1) Such regulations under this section shall require the motor vehicle manufacturer to calculate and transmit to the Secretary the financial value per gallon credit.

"(2) No later than 30 days after receipt of the calculations under paragraph (1), the Secretary shall—

"(A) review and approve such calculations to determine if they are in accordance with regulations; and

"(B) if approved under subparagraph (A), publish such calculations in the Federal Register.

"(f) Such regulations shall require—

"(1) the motor vehicle manufacturer to rebate the financial value to an individual who traded in a motor vehicle of a model year prior to 1980 described under subsection (b);

"(2) that an individual trading in a motor vehicle shall have evidence that such vehicle has been registered and in use for 1 year prior to the date of trade-in; and

"(3) that an individual who purchases a new motor vehicle and certifies that the motor vehicle of a model year prior to 1980 was not traded in but was destroyed, shall receive such financial value.

"(g) Any person violating a regulation promulgated under this section shall be subject to a civil penalty by the Secretary in an amount not to exceed $2,000.

"(h) No credits shall be given under this section on or after January 1, 1994."

Mr. SPECTER. One of the issues which I had in my Senate bill 326, which I considered offering as an amendment to the pending legislation, relates to a tax matter which could not be brought up on this bill, but I could have incorporated the idea as a sense-of-the-Senate resolution. The thrust of this possible amendment provides that there would be no deduction allowed for any employer in connection with the providing of parking subsidy to any employee, unless the employer first offers such a cash allowance in the amount of the parking subsidy to the employees so that he or she may elect to use the cash for mass transit. This is a proposal which I think has great merit.

I ask unanimous consent that at the conclusion of my remarks an editorial from the New York Times supporting this idea be included in the RECORD.

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

(See exhibit 1.)

Mr. SPECTER. Mr. President, this would provide equal treatment for employees who do not have parking places and would encourage those who do have parking places to take mass transit, which would cut down the automobile congestion. I think this is a matter which ought to receive favorable legislative consideration.

I have decided not to offer it at this time, even in the sense-of-the-Senate form, because I am told that it would complicate the process of the bill with other sense-of-the-Senate resolutions being offered on tax matters. The reality is that even if the sense-of-the-Senate resolution were to be adopted, it would not have any binding effect. I intend to pursue this matter by independent legislation, which then can be considered by the Finance Committee in due course.

The other amendment which I had notified the managers of the possible intention to propose relates to the removal of so-called "clunker cars," a program to remove cars manufactured prior to the model year 1980.

This is an idea which has been considered by a number of Senators. The distinguished Senator from Delaware, Senator ROTH, had some legislation earlier. The distinguished Senator from Wyoming, Senator WALLOP, has legislation he is working on. This is not an easy matter, because it could impinge upon antique cars, and there has been a decision not to proceed on CAFE standards on this legislation. I am advised that the submission of this kind of an amendment would open up that line. I am going to simply make these few comments. I think this is something that ought to be included in legislation, to take the old cars off of the road, as a generalization, would help to promote fuel savings, and also protect the environment.

EXHIBIT 1

[From the New York Times, June 17, 1991]

A SCREWY SUBSIDY FOR DRIVERS

Your employer can give you $15 worth of tax-free tokens, passes or fare cards each month for riding to work on public transportation. If it's more, you're taxed on the full amount, not just the part over $15. There is no such lid, however, when companies provide free parking for people who commute by car. That's a tax-exempt freebie, worth hundreds of dollars.

Sound screwy? It is. Heedless of fuel efficiency and the environment, the tax code favors driving to work. President Bush's energy message declared that something—he didn't say what—should be done about it. Administration officials lean toward a one-third increase in the modest mass-transit subsidy, plus an adjustment for inflation.

Meanwhile, the Internal Revenue Service is proceeding with the inflation adjustment, raising the $15 ceiling to $21. That would last only nine days in New York City, and less in some places.

The tax technocrats don't address the disparity between subsidies, nor would they change the rule on taxing the entire amount when it exceeds the tax-free limit. Only Congress can fix those things.

The theory behind the $15 exemption is that it's de minimis—too small to fuss with. A dozen bills in Congress offer a more sensible ceiling; most say $60 or more. But the best idea comes from two Republicans, Senator Arlen Specter of Pennsylvania and Representative Jan Meyers of Kansas. They would equalize the transit and parking subsidies by cancelling the exemption for parking unless employees were also offered an equivalent amount for travel by mass transit and car or van pools.

Tax purists oppose all such subsidies, but that's unrealistic. Employers aren't about to impose parking fees on their lots, and Congress won't make them do so. True, a fixed subsidy benefits employees unequally, depending on their tax bracket. But that's already the case with parking privileges, and it's a subject too prickly for Congress.

The current bias in favor of cars is both bad policy and unfair. It's time to strike a balance.

Mr. SPECTER. I now note the interest of the distinguished manager in proceeding, and I yield the floor.

Mr. WALLOP. Mr. President, as introduced, S. 2166 does not contain any provisions related to CAFE. This was the understanding that was reached with the committee as we proceeded to Senate consideration of this measure. A decision that I fully support.

However, I understand that there are those Senators who are considering offering an amendment relating to automobile scrappage based on earlier legislation. Such an amendment has the

potential to be related to CAFE and, as such, could be characterized as violating the understanding that was earlier reached before the Senate began debate on S. 2166. And I would concur with this judgment. Nevertheless, I understand that an amendment is likely to be offered anyway.

Had we proceeded with S. 1220 it was my intent to offer an amendment on automobile scrappage. I do not intend to offer it to this bill. However, I think that any discussion of this subject would benefit from the proposal that was developed by committee minority staff. Therefore, I ask unanimous consent that the text of my scrappage proposal be reprinted in the RECORD and I invite comments from those parties who have an interest in the subject of automobile scrappage incentives.

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

SUBTITLE E—SCRAPPAGE OF OLDER VEHICLES

SEC. 4501.(a) GENERAL.—(1) The Secretary is authorized to encourage establishment of voluntary scrappage programs by private persons for—

(A) the removal from use and the marketplace, and the scrappage, of certain pre-1980 qualified passenger automobiles and light trucks; and

(B) the generation of emission reduction credits and corporate average fuel economy credits from such scrappage.

(2) Any program pursuant to section 108(f)(1)(A)(xvi) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A)(xvi)) (relating to scrappage of vehicles) to encourage the voluntary removal from use and the marketplace of pre-1980 model year passenger automobiles or light duty trucks shall qualify for emission reduction credits and corporate average fuel economy credits pursuant to this section.

(3) The authority of this section shall not be used to directly or indirectly require removal from use and the marketplace, and scrappage, of passenger automobiles or light duty trucks.

(b) REGULATIONS.—(1) Within 180 days of the date of the enactment of this Act,

(A) the Secretary, in consultation with the EPA Administrator and the Secretary of Energy, shall prescribe such regulations as may be necessary for the establishment and implementation of voluntary scrappage programs to carry out the purposes of this section. Such regulations shall include, but not be limited to, provisions allowing any person who directly, or through an agent, purchases a qualified pre-1980 model year passenger automobile or light duty truck to receive a corporate average fuel economy credit for the applicable vehicle class if that person removes such automobile from use and the marketplace, and scraps such automobile.

(B) the EPA Administrator, in consultation with the Secretary and the Secretary of Energy, shall prescribe such regulations as may be necessary for any person who acquires a qualified passenger automobile or light duty truck pursuant to paragraph (A) to receive an emission reduction credit as provided for in section 173(c)(1) of the Clean Air Act, as amended (42 U.S.C. 7503(c)(1)) (relating to offset requirements for a proposed source in a nonattainment area) which may be traded or transferred to, and used by, any stationary source in the interstate air quality control region, as provided for in section 107 of the Clean Air Act, as amended (42 U.S.C. 7407), in which the qualified passenger automobile or light duty truck was registered for operation for the three years prior to scrappage to comply with any offset requirements in effect under Part D of the Clean Air Act.

(2) Regulations prescribed pursuant to paragraph (1) shall—

(A) avoid any adverse effect on the competitiveness of domestic automobile manufacturers;

(B) establish a system including, but not limited to, requirements for—

(i) trading, transfer and use of credits received consistent with the purposes of this section, and

(ii) monitoring such credits to insure the proper administration of any program established under this section.

(3)(A) For the purpose of calculating an average fuel economy credit under subparagraph (2)(B), the credit shall equal the difference between—

(i) the average fuel economy of all the vehicles in use in the vehicle class in the calendar year within which the vehicle is removed from use and the marketplace, and scrapped; and

(ii) in accordance with subparagraph (B) or (C), the average fuel economy of the pre-1980 qualified passenger automobile or light truck removed from use and the marketplace, and scrapped.

(B) For the purpose of subparagraph (A)(ii), the applicable average fuel economy for passenger vehicles shall be—

(i) for model years 1975 and earlier, 15.0 miles per gallon;

(ii) for model year 1976, 16.0 miles per gallon;

(iii) for model year 1977, 17.0 miles per gallon;

(iv) for model year 1978, 18.0 miles per gallon;

(v) for model year 1979, 19.0 miles per gallon; and

(vi) for model years after model year 1979, the applicable average fuel economy standard determined pursuant to section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002).

(C) For the purpose of subparagraph (A)(ii), the applicable average fuel economy for light duty trucks shall be deemed to be 15.0 miles per gallon.

(3)(A) For the purpose of calculating an emission reduction credit under subparagraph (2)(B), the credit shall equal the difference between—

(i) the average emissions of all passenger automobiles or light duty trucks in use in the calendar year within which the qualified vehicle is removed from use and the marketplace, and scrapped; and

(ii) the average emissions for the vehicle class applicable to the qualified vehicle being removed from use and the marketplace, and scrapped.

(B) For the purpose of subparagraph (A)(ii), by the Secretary, in consultation with the EPA Administrator, shall take into account any emissions resulting from poor maintenance or deterioration.

(4) For the purpose of calculating the average fuel economy credit under subparagraph (2)(B), the Secretary may take into account such factors as the estimated average remaining useful life of passenger automobiles or light duty trucks in a vehicle class and model year that could potentially be removed from use and the marketplace and scrapped.

(c) CERTIFICATION.—In order to qualify for credits available under this subsection, a person shall first certify to the Secretary and provide such proof as the Secretary may deem necessary that the engine block and chassis of the relevant pre-1980 motor vehicle has been removed from use and the marketplace, and scrapped, in accordance with the regulations issued by the Secretary, including evidence that the vehicle's identification number was removed from the registration list of the appropriate State or States, and, where emission reduction credits are to be obtained.

(d) USE OF CREDITS.—

(1) Emission reduction credits obtained in accordance with this section shall be used—

(A) in accordance with the applicable Federal, State and local air pollution regulations of the jurisdiction in which the qualified passenger automobile or light duty truck was last validly registered, and was validly registered for at least the three years, prior to its removal from use and the marketplace, and scrappage; and

(B) only within the air quality control region, as established in accordance with section 107 of the Clean Air Act, as amended (42 U.S.C. 7407)), within which the qualified passenger automobile or light duty truck was registered for at least three years prior to its removal from use and the marketplace, and scrappage.

(2) Congress average fuel economy credits for a vehicle class which are obtained by a person in accordance with this section may be sold, traded or exchanged. Credits obtained by an automobile manufacturer in accordance with this section shall only be valid for such vehicle class.

(e) VIOLATION.—Any person violating a regulation promulgated pursuant to this section shall be subject to a civil penalty assessed by the Administrator in an amount not to exceed $2,000 per violation.

(f) POST-1995 PROGRAM.—On or before January 30, 1993, the Secretary, after consultation with the Administrator, shall propose any changes in the regulations for the conduct of this credit program beginning January 1, 1996 which are deemed necessary by the Secretary, taking into consideration the experience with the program since enactment of this section and maintaining, solely for the purposes of calculating the corporate fuel economy credit for this program, a single annually-revised fuel economy standard for all automobile manufacturers for model years 1996 and each subsequent year. Effective in calendar year 1996, the Secretary may extend the application of programs under this section to post-1979 model year, but pre-1985 model year, passenger vehicles and light duty trucks.

(g) FINANCIAL ASSISTANCE.—(1) The Secretary may provide technical and financial assistance to State and local governments to encourage the establishment of voluntary programs by private persons under this section. The Secretary, in consultation with the EPA Administrator and the Secretary of Energy, shall adopt rules necessary to review and approve State programs that qualify for financial assistance under this subsection. Such rules shall require that, for a State or local government program to qualify for financial assistance under this subsection, at least 50 percent of any State or local government administrative costs are to be derived from non-Federal funds.

(2) AUTHORIZATION.—There is hereby authorized to be appropriated to the Secretary from the Excessive Fuel Consumption Fund such funds as may be necessary to carry out the purposes of this subsection.

(h) DEFINITIONS.—For the purposes of this section, the term—

(1) "EPA Administrator" means the Administrator of the Environmental Protection Agency;

"(2) "any person" is as defined in section 302(e) of the Clean Air Act (42 U.S.C. 7602(e));

"(3) "qualified", as applied to a passenger automobile or light-truck, means a vehicle that is in operating condition and registered for operation for each of the three years preceding the year of its removal from use and the marketplace, and scrappage, pursuant to this section; and

"(4) "Secretary" means the Secretary of Transportation.

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 1590

(Purpose: To require the Secretary of Energy to offer to enter into a Vehicle Fuel Efficiency Research Agreement)

Mr. JOHNSTON. Mr. President, I send an amendment to the desk on behalf of the distinguished Senator from Michigan [Mr. RIEGLE]. The amendment has been cleared. It is with regard to vehicle fuel efficiency research agreements.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. RIEGLE, proposes an amendment numbered 1590.

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

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

The amendment is as follows:

At the appropriate place, insert the following new title:

TITLE —VEHICLE FUEL EFFICIENCY RESEARCH AGREEMENT

SEC. 01. DEFINITIONS.

As used in this title:

(1) AGREEMENT.—The term "Agreement" means the Fuel Efficiency Research Agreement described in this title.

(2) LABORATORY.—The term "laboratory" has the same meaning as is provided in section 12(d)(2) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)).

(3) VEHICLE.—The term "vehicle" means a passenger vehicle or light truck.

SEC. 02. AGREEMENT

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall offer to enter into a cooperative research and development agreement with non-Federal parties described in subsection (b) pursuant to section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a), to be known as the "Vehicle Fuel Efficiency Research agreement", to provide for research and development of technology to enhance the fuel efficiency of vehicles through cooperative multi-industrial teams, cost-sharing, and other activates considered appropriate by the Secretary.

(b) MEMBERSHIP.—The non-Federal parties to an Agreement shall be representatives of private United States corporations that manufacture large quantities of vehicles (as determined by the Secretary).

SEC. 03. TERMS.

(a) IN GENERAL.—Subject to the other provisions of this section, an Agreement shall provide for—

(1) the development of materials and manufacturing techniques for advanced lightweight structural components for vehicles;

(2) the development of efficient ancillary systems, including air conditioning, heating, lighting, and windows, that reduce the energy requirements of vehicles and that have less adverse environmental impact that systems in use on the date of enactment of this Act;

(3) the development of a system trade-off design for hybrid electric vehicles, including—

(A) propulsion systems integration;

(B) heat engine types and sizes;

(C) battery and engine interfaces;

(D) control system requirements; and

(E) electrical component requirements;

(4) the acceleration of the evaluation of the feasibility of, the development of, and the integration into vehicles of advanced propulsion systems, including the automotive gas turbine engine and fuel cells;

(5) the initiation of a ceramic technology insertion program for near-term application in current engine designs in order to improve fuel efficiency and reduce emissions; and

(6) the initiation of an advanced catalyst development program to consider new materials developments and alternative fuels utilization.

(b) AVOIDANCE OF DUPLICATION.—The Secretary shall ensure that the activities undertaken pursuant to an Agreement as described in subsection (a)—

(1) supplement the fuel efficiency research and development of private industry and do not duplicate, displace, or reduce the quantity of the research and development; and

(2) do not duplicate research and development conducted pursuant to—

(A) the Automotive Propulsion Research and Development Act of 1978 (15 U.S.C. 2701 et seq.); and

(B) the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (15 U.S.C. 2501 et seq.).

(c) PROTECTION OF CLASSIFIED INFORMATION.—The Secretary, in consultation with the Secretary of Defense, shall take such actions as are necessary to prevent the dissemination of classified information (including information whose dissemination could reasonably be expected to have an adverse effect on the common defense and security) as a result of activities carried out under this section.

(d) USE OF CERTAIN DEPARTMENT OF DEFENSE FACILITIES.—The Secretary of Defense shall permit the parties to an Agreement to use the facilities and services of any laboratory under the jurisdiction of the Department of Defense that the Secretary of Defense determines will assist the parties in carrying out an Agreement.

SEC. 04. FUNDING.

In each fiscal year, the Secretary shall pay the Federal share of the costs incurred through an Agreement.

SEC. 05. ANNUAL REPORT.

The Secretary shall submit to Congress annually a report on all activities being carried out pursuant to this title.

SEC. 06. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—Subject to subsection (b), there are authorized to be appropriated such sums as are necessary to carry out this title for each of fiscal years 1993 through 1995, to be available without fiscal year limitation.

(b) LIMITATION.—The sums shall not exceed $350,000,000 for the 3-year period.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. JOHNSTON. Mr. President, the amendment establishes a joint Federal-industry agreement that couples the U.S. auto companies and related business partners with the U.S. Government in an effort to use the most advanced research and development assets of the United States for developed technology that will create the best fuel efficiency technically possible.

Mr. RIEGLE. Mr. President, I rise today to offer an amendment to S. 2166 to create an advanced research fuel efficiency agreement. The amendment before us today will establish a joint Federal-industry agreement that couples the U.S. auto companies and their related business partners with the U.S. Government in an effort to use the most advanced research and development assets of the United States to develop technology that will create the best fuel efficiency technologically possible.

Under this amendment, the agreement will research and develop new and innovative technology to enhance the fuel efficiency of vehicles through cooperative multiindustrial teams, cost sharing, and other activities considered appropriate by the Secretary of Energy.

As many Members know, in 1974, Congress passed legislation requiring U.S. automakers to make large increases in their new car fleet corporate average fuel economy standards. Since that time, the U.S. automakers have almost doubled their CAFE averages from 14 to 28 miles per gallon. But, the lowest fruit has been picked and now the job gets much more difficult.

Some of these gains in fuel efficiency have been due to the development of new technologies by automakers. But most have come from vehicle downsizing; the weight of the average car has been reduced by 1,000 pounds.

Bills now pending in the Senate, S. 279, would mandate a 40-percent increase in each manufacturer's CAFE by 2001—up to 45 mpg for cars and 35 mpg for light trucks, vans and multipurpose vehicles. Proponents argue that such CAFE increases are possible without further downsizing.

As I have said many times before, steep CAFE increases would force automakers to build substantially smaller and lighter vehicles because there simply are no magic technologies that can meet the proposed fleet averages in bills now pending in Congress. With this amendment we will make a real investment in developing the technology and begin increasing fuel efficiency without destroying the long-term viability of the U.S. auto industry. This amendment will allow the U.S. companies and the Federal Government to work together to develop the most fuel efficient cars in the world.

Obviously, if this technology was available now, it would have appeared

in countries like Japan and West Germany which are totally dependent on foreign oil, and where the price of gasoline has historically been 3 to 4 times higher than in the United States. But, in fact, the new car fleet fuel economy in Japan and West Germany is in the same range as in this country—27 to 31 mpg.

Higher CAFE standards would put manufacturers without developed-needed technology in conflict with consumers. Because automakers would have to further reduce the size and weight of their vehicles and limit their production of larger models, most consumers would be limited to a choice of minicompact, subcompact, and compact cars which may not meet their needs. Cars are available today in the 40–50 mpg range, but they only appeal to 2 percent of car buyers. Automakers also would have to scale back or eliminate production of full- and mid-size vans and pickup trucks—the backbone of small businesses and farms as work vehicles.

Forcing automakers to produce and sell a mix of substantially smaller vehicles that do not meet the needs of most consumers would cause further declines in vehicle production, which could jeopardize tens of thousands of jobs at assembly and supplier plants, dealerships, and other industry-related businesses.

Sharp reductions in the size and weight of cars and light trucks would increase the safety risks to motorists. Studies by the National Highway Traffic Safety Administration, Insurance Institute for Highway Safety, and the New England Injury Prevention Research Center all warn that a fleet dominated by small cars would lead to major increases in highway deaths and injuries.

Further fuel economy improvements will be made as vehicle manufacturers continue to broaden the application of known fuel efficiency technologies across their model offerings, and continue their efforts to develop vehicles powered by fuels other than gasoline. Moreover, government and private sector efforts to foster vehicle fuel efficiency should be part of an overall policy that works with market forces to conserve energy or lessen the potential of global climate change.

This is not a substitute for CAFE. The CAFE debate will happen another day and we will not use this as a CAFE substitute in further debate.

The agreement's charge will be multifaceted. First, the consortium will develop materials and manufacturing techniques for advanced lightweight structural components for vehicles.

The agreement will develop ancillary systems, including air-conditioning, heating, lighting, and windows that reduce the energy requirements of vehicles and that have less adverse environmental impact than systems currently in use.

The agreement should develop a systems tradeoff design for both electric, hybrid electric, and gasoline-powered vehicles, including propulsion systems integration, heat engine types and sizes, battery and engine interfaces, control system requirements, and electrical component requirements.

The research and development should accelerate the evaluation of the feasibility of, the development of, and the integration into vehicles of advanced propulsion systems, including the automotive gas turbine engine and fuel cells. Additionally, the agreement should initiate a ceramic technology insertion program for near-term application in current engine designs in order to improve fuel efficiency and reduce vehicle emissions.

Under this amendment, the agreement will initiate an advanced catalyst development program to consider new materials developments and alternative fuels utilization. Additionally, the amendment contains a section that ensures the activities of the agreement supplement current fuel efficiency research and development while not duplicating, displacing, or reducing the amount of research of the Big Three automakers.

Funding for this agreement is set at $350 million for 3 years. The Federal share shall be 50 percent while the automakers contribute 35 percent. It is a start of what hopefully will be a long relationship between the U.S. automakers and the Federal Government's best laboratories.

Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

The question is on agreeing to the amendment.

The amendment (No. 1590) was agreed to.

Mr. JOHNSTON. 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.

AMENDMENT NO. 1591

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. RIEGLE, proposes an amendment numbered 1591.

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

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

The amendment is as follows:

At the appropriate place, add the following new section:

"SEC. . LIMITS ON PARTICIPATION BY COMPANIES.—A company shall be eligible to receive financial assistance under this Act only if—

"(a) the Secretary finds that the company's participation in the Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

"(b) either—

"(1) the company is a United States-owned company; or

"(2) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunites, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

Mr. JOHNSTON. Mr. President, this cleared amendment has as its goal to ensure that the benefits of the various programs established in the bill go mainly to firms with a commitment to the U.S. market.

Mr. WALLOP. Mr. President, speaking for myself, and I am not in the minority on the committee, I have an objection to this kind of amendment generally. I think that it is bad economic policy and bad political policy. I also would not stand in the way of it and therefore would grant our approval of it being adopted with the RECORD showing that I do not in general approve of this kind of thing and would if we were voting, myself, vote against it.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment.

The amendment (No. 1591) was agreed to.

Mr. JOHNSTON. 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.

AMENDMENT NO. 1592

(Purpose: To amend portions of the bill pertaining to Public Utility Holding Company Act reform)

Mr. JOHNSTON. Mr. President, I now send to the desk the amendment previously referred to on behalf of Mr. RIEGLE, Mr. DODD, Mr. KERRY, Mr. BRYAN, Mr. LEVIN, Mr. DOMENICI, Mr. BOND, and Mr. BRADLEY, that I pre-

viously offered and had to withdraw because it had not been cleared. The amendment is now cleared.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. RIEGLE (for himself, Mr. DODD, Mr. KERRY, Mr. BRYAN, Mr. LEVIN, Mr. DOMENICI, Mr. BOND, and Mr. BRADLEY) proposes an amendment numbered 1592.

Mr. JOHNSTON. 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 387, strike lines 9 through 18 and insert the following:

SEC. 15105. PROTECTION AGAINST ABUSIVE AFFILIATE TRANSACTIONS; STATE AUTHORITIES; FEDERAL RESTRICTION; RECIPROCAL ARRANGEMENTS PROHIBITED.

(a) IN GENERAL.—An electric utility company may not enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator if the exempt wholesale generator is an affiliate or associate company of the electric utility company.

(b) STATE AUTHORITY TO EXEMPT FROM PROHIBITION.—Notwithstanding subsection (a), an electric utility company may enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator that is an affiliate or associate company of the electric utility company if every State commission having jurisdiction over the retail rates of such electric utility company makes a specific determination in advance of the electric utility company entering into such contract that the transaction will benefit consumers, is in the public interest, and does not violate any State law (including where applicable, least cost planning).

(c) SALE JUST AND REASONABLE.—A rate or charge for the sale of electric energy at wholesale in interstate commerce by an exempt wholesale generator shall not be considered just and reasonable within the meanings of sections 205 and 206 of the Federal Power Act if the rate or charge allows the exempt wholesale generator to receive any unfair advantage resulting from the fact that the purchaser of such electric energy is an affiliate or associate company of such exempt wholesale generator.

(d) RECIPROCAL ARRANGEMENTS PROHIBITED.—Reciprocal arrangements among companies that are not affiliates or associate companies of each other that are entered into in order to avoid the provisions of this section are prohibited.

On page 387, lines 24 and 25, strike "on grounds of prudence or imprudence".

On page 392, strike line 12 and all that follows through "may include:" on line 20, and insert the following:

SEC. 15108. STATE COMMISSION ACCESS TO BOOKS AND RECORDS; PUBLIC ACCESS TO RECORDS AND INFORMATION; DEFINITION.

(a) ACCESS TO BOOKS AND RECORDS.—Each affected State commission shall have continuing and periodic access to relevant financial and other records of the exempt wholesale generator and any electric utility company that is an affiliate or associate company of such exempt wholesale generator relevant to the exercise of such affected State commission's authority. The records to be provided hereunder shall be specified by the affected State commission and may include:

On page 393, line 4, insert "of the exempt wholesale generator or any electric utility company that is an affiliate or associate company of such exempt wholesale generator that are" before "relevant".

On page 393, line 5, strike the colon and all that follows through line 8, and insert a period.

On page 394, strike lines 12 through 14, and insert the following:

(c) NONPREEMPTION.—Nothing in this section shall—

(1) preempt applicable State law concerning the provision of records and other information; or

(2) in any way limit rights to obtain records and other information under Federal law, contracts, or otherwise.

Mr. JOHNSTON. Mr. President, it is my belief that electric utilities, which currently have—and will retain under this legislation—an obligation to serve all customers within their franchised service territory, must have maximum flexibility in meeting their future generating needs. The purpose of the legislation before us today is to increase the options available to utilities in meeting those needs, by providing for a new form of generation—the exempt wholesale generator. While we expect that such EWG's will be relied upon by many utilities to serve part of their future generating needs, we must also remember that much of the new generation the country will need will continue to be provided by existing utilities under traditional regulation. Not only should this, or other, legislation not discourage this, public policy should encourage utility contruction when the customer's interest is best served.

State regulators will review with utilities both the need for new capacity and how that need will be filled. Questions of the balance between utility construction generation and purchased power will be resolved on a case by case basis. In many cases the decision will be that the utility build the needed generation. We must remember that our electric system is presently the most reliable and efficient in the world. This legislation is not intended to create a risk to that system by establishing a policy as to who builds future generation. That decision is left to utilities and to state regulators. I fully expect utilities to continue to fulfill their obligation to serve by a variety of means, prominent among which is by the construction of plants under traditional regulations.

Mr. GRAMM. Mr. President, there has been some discussion here about the issue of open access by independent power producers to transmission lines. I want to make it clear that while this bill seeks to reform the Public Utility Holding Company Act concerning electric power generation, the Senate has made no decision in favor of open access.

The Senate has concluded that power generation is not a natural monopoly. However, the reform of PUHCA in this bill is not a reform of our electric generation or transmission industry. The PUHCA provision of this bill is just a small step toward the introduction of competition on the generation side. We have not addressed the much broader question of what sort of electric industry do we want in America?

PUHCA reform will force us to address that question in the future but to move toward open access now is to answer the question before it is asked. Open access to transmission lines can be addressed only as part of a comprehensive review of the entire electric generation and transmission industry. This bill is not the result of any such review and I therefore urge the rejection of any decision on open access in this bill.

The PRESIDING OFFICER. Is there any further debate?

If not, the question is on agreeing to the amendment.

The amendment (No. 1592) was agreed to.

Mr. JOHNSTON. 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.

AMENDMENT NO. 1593

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP] proposes an amendment numbered 1593.

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:

On page 388 line 3 following the word "Provided," insert the following:

"That the state commission shall have no authority to determine the reasonableness of the wholesale rate or charge (and the terms and conditions thereof), *Provided further*,"

Mr. WALLOP. Mr. President, due to the parliamentary situation this had to be offered not as a second degree to the previous amendment but offered separately and it merely codifies the Pike County doctrine. It neither expands it or nor detracts from it. It leaves current law in practice as it is but without it it would have been somewhat in doubt.

Mr. President, I ask unanimous consent to print in the RECORD explanatory statements regarding section 15101 and section 15106.

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

EXPLANATORY STATEMENT REGARDING SECTION 15105

The proposed amendment to Section 15105 would add additional protections against abusive affiliate transactions, without imposing a complete ban or bar against such transactions, many of which have substantial benefit to consumers. In order to address the risks that some believe are present, the amended provisions would require the State Commission with regulatory jurisdiction over the retail rates of the purchasing electric utility to make specific findings that a contract between the utility and an affiliated EWG will benefit consumers, is in the public interest and does not violate any state law. These provisions would apply only to purchases from an affiliated EWG. Purchases from non-affiliated EWG's would not require the specific findings. The provisions would also not apply to purchases from affiliates which are not EWGs, rather those purchases would continue to be treated under existing law.

The amendment provides that an electric utility "may not enter into a contract" for the purchase of energy from an affiliated EWG, unless the required findings are made. Normally in these arrangements, the parties negotiate a contract and sign it, but include a provision that the contract will not be effective until the necessary regulatory approvals have been obtained. These approvals normally include FERC approval of the wholesale rate, and any necessary approvals by other federal or state agencies. It is the intention of the amendment to permit this method of proceeding to continue. The intent of the amendment is not to bar the signing of contracts which are not effective pending approval, or to require some separate approval before the parties could establish the proposed terms of the sale. Rather, the intent is only to assure that the contract is not effective, or can be "unwound", pending the necessary approvals.

The amendments provides that the required determinations will be made by "every State Commission having jurisdiction over the retain rates" of the purchasing utility. For these purposes, the Commission with jurisdiction is the Commission having jurisdiction over the utility (or utilities) proposing to enter into the specific contractual relationship with the EWG. Where that utility provides retail service in more than one jurisdiction, it would require approval from each commission having retail rate authority over it. However, where the purchasing utility also is a participant in pooling or interchange arrangements or is part of an integrated system, the mere fact that other pool participants could at some time receive energy which has been generated by the EWG (which would be dispatched into the pool or integrated system), does not require that the state commissions with jurisdiction over their retail rates approve the EWG contract. Such indirect purchases as a result of pooling or interchange arrangements are not a contract for the purchase of energy from an affiliated EWG within the meaning of this amendment.

The amendment requires the State Commission with jurisdiction to make a specific determination in advance of the effectiveness of the contract. It is the amendment's intent that the determination be made in advance and on a timely basis. In the competitive market that Title XV is designed to create, additional regulatory activities should not serve to make affiliate transactions uneconomic or place them at a competitive disadvantage. The amendment's intent is to assure a specific review of the public interest and benefits to consumers, not to impose a competitive disadvantage. The State Commission should therefore establish a set of procedures which will assure that timely review occurs. Of course, the Commission having made a determination will be bound by it, to the same extent any regulatory agency must adhere to its decisions. It is not the intent of the amendment to provide a mechanism for the State Commission to make the specific determinations at one time, on which basis the contract becomes effective and all parties bound to compliance; and then to allow a later determination by the State that some other arrangement would now be preferable. Where the parties have relied on the Commission's determination, later rulings may not impair those effective contractual arrangements.

Subsection (c) of the amendment to §15105 provides that the FERC may not approve the wholesale rate to be charged by an EWG where the EWG has received "any unfair" advantage resulting from the EWG's status as an affiliate or associate of an electric utility. It is not the intent of the amendment that any advantage possessed by an EWG as a result its affiliate status be deemed unfair. The intent of the amendment is to reach to those advantages which are the result of "sweetheart" or "less than arms length" bargaining. Thus, for example, an EWG may, as a result of its relationship to an electric utility, have access to existing power plant sites, or particular expertise in the design, construction or operation of generation facilities. Such an advantage would not be an "unfair" advantage. On the other hand, where, as a result of its affiliation, an affiliated EWG received particular information not made available to others, e.g., the cost of the utility constructing its own facility in rate base, or a change in the utility's need for power, that information might represent an unfair advantage over others seeking to sell energy to the utility. The intent of the amendment is to assure that the issues are subject to review at FERC, but not to prevent an affiliate EWG from using its expertise and resources to compete.

§15105 as amended is not intended to apply to electric utilities which are not subject to State Commission regulation.

EXPLANATORY STATEMENT REGARDING SECTION 15106

The amendment to Section 15106 would change the first sentence of new subsection 209(d)(1) of the Federal Power Act, to make express the Committee's original legislative intent. Paragraph (1) of subsection (d) would provide that the Federal Power Act does not limit the authority of a State Commission, acting in accordance with State law, to disallow the inclusion of wholesale power costs in the retail rates subject to that State Commission's jurisdiction, where the wholesale costs are unreasonably or imprudently incurred in light of available alternatives. The intent of the Committee in drafting the bill, as explicitly described in the Committee Report, was to codify existing authority exercised by State Commissions under the "Pike County doctrine". The Committee's intent, and the intent of this amendment, is only to codify existing authority, and not to repeal, alter or extend the authority, as embodied currently in case law and regulatory practice.

As noted in the Committee's report, States currently use two theories of review in undertaking their determinations. Some State Commissions, adopting the premise of the Pike County decision itself, determine whether it was prudent for the purchasing utility to enter into the transaction. Costs which are imprudently incurred, because better alternatives were available at the time, may not be included in retail rates. Other State Commissions, following their own statutory obligations or precedents, determine whether the transaction is unreasonable, or an abuse of the utility's management discretion. Where, in consideration of the available alternatives at the time the utility's decision was made, the utility acted unreasonably, the costs may not be included in retail rates.

The Committee's intent was expressly not to preclude State Commission review from using the appropriate standard adopted under State law, whether it be prudence or some alternative formulation, such as "used and useful". The amendment we propose today simply makes that intent explicit in the statutory text. There is no alteration of the Committee's intent.

As in the original bill, to the extent State Commissions under existing State law are able to place conditions on the passthrough of wholesale power costs in retail rates, nothing in paragraph (1) is intended to limit that power. Similarly, there is no intent to extend the "Pike County" doctrine or to increase the authority of the State Commissions over wholesale transactions generally. This amendment, as the Committee bill, only codifies the existing law and practice.

No change is made or intended in the remainder of Section 15106.

Mr. BUMPERS. Mr. President, I would like to engage Senator JOHNSTON in a brief colloquy.

Mr. President, Senator WALLOP'S amendment codifies the Narragansett doctrine. My concern is that we not erode State regulatory authority. Does this amendment nullify the Pike County doctrine? Will States still be able to review sales and purchases for prudence?

Mr. JOHNSTON. No, it does not in any way nullify the Pike County doctrine. Yes, States will still be able to review sales and purchases for prudence.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 1593) was agreed to.

Mr. WALLOP. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. WALLOP. I thank the Chair.

Mr. JOHNSTON. Mr. President, with these amendments and with the previous colloquy between myself and Senator RIEGLE, we now have the chairman of the Banking Committee—I believe it is safe to say—satisfied, and he has no further amendments on the PUHCA area.

It is my hope to finish up tonight on the PUHCA area and have a unanimous consent before the evening is out foreclosing any further amendments on PUHCA. We propose to do the same

thing with respect to the nuclear section, that is, to have a unanimous consent foreclosing further amendments on that. Then thereby we might be able to come back tomorrow and finish up the rest of the bill.

Mr. WALLOP. Will the Senator yield?

Mr. JOHNSTON. I yield.

Mr. WALLOP. I would say I know of no concern of the ranking member of the Banking Committee, who is Mr. GARN, to the PUHCA requirement. He has communicated none to me. So I am assuming we will check to verify it that that is the case, and then we should be able to come to closure on PUHCA.

Mr. JOHNSTON. I hope that is so.

Mr. WIRTH. Will the chairman yield?

Mr. JOHNSTON. Yes.

Mr. WIRTH. On the subject of the Public Utility Holding Company Act, I had wanted to engage the distinguished chairman of the committee for just a few minutes to talk about one of the issues in the Public Utility Holding Company Act that has been of great concern to me and great concern to the Public Service Co. of Colorado.

When we got into the initial hearings on the Public Utility Holding Company Act, as the chairman will remember, I was a great advocate for reform of that statute. I think reform of PUHCA is extremely important for us today.

Most of the arguments that were made against reform of the Public Utility Holding Company Act struck me as very familiar. They were essentially arguments that the system is fine as it is, and if you sell power from outside the current system you are going to have major damage to that system.

It reminded me, as I noted during the hearings, of what we used to hear when there was discussion that we ought to maintain a monopoly in the telephone business. That changed, and I think changed for the better for the country. We now have a much more competitive telephone system, a much more innovative telephone system, and one that offers consumers a lot more choices and better prices.

But leaving that aside, there was one issue which, the chairman will remember, has remained troublesome to me and others, and that is the debt-equity issue. The argument has been made by the Public Service Co. of Colorado, that if an independent power supplier were to come into the State of Colorado and build a powerplant, they would be able to do so using mostly debt to finance that powerplant. If the Public Service Co. were to build the same powerplant, the Public Service Co. would be required by the State's regulatory commission to use probably about 50 percent equity. The difference in cost in supplying that power between what the Public Service Co. could do and what the competitive new entrant could do would be significant since obviously the cost of equity is going to be higher than the cost of debt. Consequently, this particular part of the reform of the Public Utility Holding Company Act would put the Public Service Co. of Colorado, or any other utility who did not have the advantage of such debt financing, would put that utility at a disadvantage. Consequently, the argument was made that what we ought to do is to require a kind of a level playing field between debt and equity.

I raised this issue during the markup of the energy bill last fall, and the chairman recognized this concern, and we did get language in the committee bill requiring State public utility commissions to take into consideration when they are dealing with new power producers that might come into the State.

But it remains a concern of mine. I realize at this point that the chairman has the votes on this issue. I also realize that an arrangement has been worked out between the chairman of the Energy Committee and the chairman of the Banking Committee. But I wanted for the record to raise this issue once again.

We came part of the way in the amendment offered last fall, which the chairman did on my behalf and I appreciate that. But this debt-equity issue still remains. And I was hoping that the chairman of the Energy Committee might give us the benefit of his thinking on this issue, and why it is that he believes that the debt-equity issue is not in his view a relevant issue.

I would really like to hear from the chairman, his thinking and reasoning on this. This is important to me and I think a number of other Senators.

Mr. JOHNSTON. Mr. President, I thank the Senator for his thoughtful question because his question is really at the heart of the Public Utility Holding Company Act Reform. We have had, indeed, indepth hearings on this very issue. We have commissioned a staff study on the relative cost of capital for independent power producers as opposed to public utilities, and here is what we found.

There are generally two arguments with respect to the debt-equity issue. The public utilities generally are required by public utility commissions to have a higher ratio, perhaps 35 percent equity to 65 percent debt, and the argument is made that, well, the fact that they have to put in so much equity, whereas an independent power producer can have much less equity, does two things: first of all, it results in a lack of reliability, that a higher leveraged company might therefore be more likely to go under in the event of any difficulty, might go the way of the junk bond finance market; and, two, that, in relative competition to public utilities, they would place utilities at a disadvantage.

We found, Mr. President, that neither argument is proper for these reasons: First, on the issue of reliability.

PURPA, the Public Utilities Regulatory Policies Act of 1978, allows for competition for generation of electric power in two instances: For qualifing facilities, which are either cogeneration facilities or renewable resource facilities.

Qualifying facilities have generated since 1978 some 30,000 megawatts of electricity, most of that in a competitive way. Sometimes we call these facilities IPP's. Virtually all of them are financed on what the Senator would call a highly leveraged basis, generally around 80-90 percent debt.

We have found, Mr. President, that they are actually more reliable than public utilities. And the reason for that is that an IPP can come in with a contract with a utility which calls for the delivery of a certain amount of power over a certain number of years at a designated price or a price ascertainable with respect to certain objective criteria, so that they have a fixed contract which then in turn can be used to support the debt service on the money to be borrowed.

So it is, in effect, like a net net lease. If you own a piece of property and have a net net lease on it, you can go to the bank because you know that that net net lease is going to be paid. They do not have to take a chance with regulatory commissions because it is already approved in advance. They do not have to take a chance with the economy of the area, whether or not it grows. Whether or not electricity demand is great or not does not affect their contract, their right to be paid. They do not have to take a chance on fires or floods or hurricanes or tornadoes or other weather disturbances. They do not have to take a chance on labor problems. In effect, they have a net net contract to be paid so much over a period of time, which is as good as gold.

Furthermore, they have a shorter term. The term of their contracts, terms of borrowing, usually averages 15 years or less. Whereas, utilities can finance over a longer period of time.

There is a particularly interesting article in the Public Utilities Fortnightly, entitled "IPP Leveraged Financing: Unfair Advantage?", which I put into the RECORD earlier in this debate but which points out that IPP coal plants have an average of roughly 88 to 90 percent availability, or percent of the time which they are working, compared to 81 percent for utility coal plants of comparable size. Gas plants show a similar difference, 94 to 96 percent availability compared to 87 to 92 percent.

So that in terms of reliability, the record has shown that electricity generated in a competitive way with 90 percent debt on the average is more reliable in fact.

Mr. WIRTH. Just on that particular point, the response to that argument is that the reason that you have a stable independent power producer who is able to have a highly leveraged plant goes back to the utility itself. Because it has a great deal of equity, it is the solidity of the utility and its high equity that allows the IPP to be reliable, and thus enables it to finance with high debt leverage.

So they are making the argument that this is another example of this not being a level playing field.

Mr. JOHNSTON. There is bifurcation of the argument here. The arguments are two: First, that they are not reliable.

Mr. WIRTH. I understand.

Mr. JOHNSTON. And, secondly, that there is an unfair advantage.

Mr. WIRTH. And they would say the reliability is rooted in the equity of the utility itself; that it is a very solid investment and it is making a contract with the IPP and, of course, the utility is going to deliver on its contract to the IPP because the utility has a very solid equity base.

Mr. JOHNSTON. Well, the point is, experience has shown from the standpoint of reliability, the ability to deliver in rain or storm or sunshine, that the IPP's have more availability, that is, more reliability.

Mr. WIRTH. You would make the distinction—just to make sure I understand this—you are making a distinction between the reliability of the delivery of power versus the reliability of financing.

Mr. JOHNSTON. That is correct.

Mr. WIRTH. So let us set aside the reliability of delivery of power, and you are suggesting by the figures that were in the Fortnightly thing.

Mr. JOHNSTON. Now the question is, is that fair?

Mr. WIRTH. That is the second issue.

Mr. JOHNSTON. The staff study which we have done through our staff economist, Dr. Hausker, of which we are very proud—I think the Senator from Colorado has seen that study—indicates that the average cost of capital for independent power producers is not lower than that of utilities.

Moreover, the article just referred to from the Public Utilities Fortnightly also points out that they study it in some detail and come to the conclusion that "The result is a capital charge rate, or total cost of financing, approximately 4 percent higher for IPPs than for utilities."

Why is that? It is because of the shorter period of time that IPP's must finance for; because of the fact that, when you have a higher percent of debt you have to pay, generally, a higher percentage rate.

In other words, if you go in to borrow on a mortgage, 90 percent as opposed to borrowing 50 percent, you usually have to pay a little bit higher cost of capital.

Also not reflected in the interest rate are the sinking funds required by the lender because the lender himself enforces the reliability of the IPP by requiring that he have a sinking fund for maintenance and operation and for debt service. The size of that sinking fund depending upon the particular circumstance.

I mean, every plant is different. If you have a gas turbine, for example, which is a highly reliable machine, and you have a source of gas with long-term contracts, and you have a fixed contract for payment to your supplier of the turbine, you have a fixed contract for construction of the facility so that you know what all your costs are, and your income stream is sufficient to pay for that, then it would be unnatural, unnecessary, and improper to require that you have this additional sunk equity. It is unnecessary for the security of the deal.

Consequently, from a standpoint of economic efficiency—and by the way, this article in Public Utilities Fortnightly talks about the good job that the markets have done. If I may quote the last paragraph, the author says:

> The bottom line is that financial institutions have done a thorough job of assessing the different risks presented by IPP's and utilities, and have developed appropriate debt structures for each. This market solution, produced by lenders without a vested interest in the competition between IPP's and utilities, is fair. Ratepayers enjoy the benefits of these lower costs, which are unlikely to be matched by utilities without an effective incentive structure. The IPP's advantage is real, but it is the product of price competition and profit incentives, not of financial hocus pocus.

Mr. President, I thought I put this article in but apparently—staff tells me I have not.

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

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

IPP LEVERAGED FINANCING: UNFAIR ADVANTAGE?

(By Roger F. Naill and William C. Dudley)

Lower independent power costs have resulted not from any unfair advantage in financing—as some critics claim—but from the benefits of competition.

The subject of leveraging has become an important component in the debate over the future structure of the electric utility industry. Since the passage of the Public Utility Regulatory Policies Act (PURPA) in 1978, most of the new electric generation capacity constructed in the United States has been built not by utilities, but by nonutility or "independent" power producers (IPPs). Unlike utilities, IPPs are not subject to cost-of-service rate regulation. The experience of the IPP industry, therefore, gives some insight into the effects of an alternative model of utility industry structure: competitive pricing of electricity generation.

IPPs normally employ "project financing"—in which the loans for a project are secured primarily by the assets of the project (and not by the assets of the "parent" or owner of the project). To support project financing, the IPP developer puts together a package that includes a site, a signed electric contract, a steam contract (if the plant is to be a qualifying facility [QF] under PURPA), a construction contract, and all the necessary environmental permits. The developer then usually attempts to borrow as much of the project's capital costs as possible—ergo the term "highly leveraged financing." This is because debt is cheaper than equity (equity is a riskier investment and requires a return significantly higher than debt), and cheaper still when its preferential tax treatment is considered. For this reason, equity is typically used by IPPs only to take risks that lenders are unwilling to assume, and to assure lenders that the developer will not "walk away" if a project becomes less profitable.

The degree to which an IPP project is leveraged depends on a number of factors. More profitable and less risky projects warrant higher amounts of debt. Nevertheless, fluctuations in the market for debt influence the interest rate and the terms available—including the amount of leveraging that lenders will allow for a given type of project. The IPP borrower may also strive for a certain debt-equity ratio to optimize the project's capital structure.

In contrast, a utility finances construction—and all its other capital requirements—by issuing debt or selling equity from the "parent" company. Its capital needs are typically financed by issuing equity and debt, secured by the assets on the balance sheet, in roughly a 50:50 ratio. The cost of debt depends on the utility's bond rating—with the more risky utilities rated lower and, therefore, paying more for debt. If borrowing new capital would cause the utility to exceed its allowed debt-to-equity ratio, the utility will have to sell equity to raise part of its capital requirements. In the case of utility financing, the debt is secured by all the utility's assets—not just those of the particular construction project needing the investment.

What causes this difference? Some utilities argue that IPPs have an unfair advantage due to their highly leveraged project financing. However, the lower costs stem from the incentives inherent to price competition.

NO FINANCING ADVANTAGE

The argument that IPPs have an unfair cost of capital advantage begins with the undisputed fact that they are able to use more highly leveraged financing than utilities. Since debt is cheaper than equity—so the argument goes—the ability to use 75, 90, or even 100 percent debt financing constitutes an unfair advantage over utilities, which can use no more than 50 percent debt. Although it is usually recognized that IPPs must pay more for their debt and equity than utilities, it is argued that these costs are more than offset by the increased leverage of project financing, and that IPPs systematically benefit from a lower, weighted after-tax cost of capital (WACC) than utilities. The magnitude of this benefit depends upon the assumptions made about the degree of leverage, interest rates, and equity returns used by IPPs and utilities. Table 1 demonstrates a typical WACC calculation based on assumptions derived from a survey of utility and IPP annual reports from 1988 and 1989.

The calculation demonstrates that it is indeed plausible that the average IPP has a lower WACC then the average utility, even when the increased costs of debt and equity required by project financing are accounted for.

However, the WACC is an inappropriate measure of the total cost of financing, because it accounts for neither the shorter debt term received by IPPs compared to utilities, nor for the lender-imposed requirement that IPPs maintain cash reserve funds. These are important omissions, because both increase the total cost of financing for IPPs. Because IPPs can generally borrow for only 12 to 17 years, while utilities routinely issue debt with 30- to 35-year maturities, utilities are able to spread the costs of new plants over a much longer period than IPPs, which effectively reduces utilities' financing costs relative to IPPs. The debt reserve funds required of IPPs compound this effect, by reducing the cash flow available as a return on equity in the early years of a project. The combination of these effects on the total cost of financing is as large as the effect of leveraging. Even with a lower WACC than utilities, an IPP employing 15-year project financing may have a higher total financing cost than its regulated competitors.

The capital charge rate, which represents the real levelized cost of financing a new plant, is a better measure of total financing costs than the WACC. This calculation, unlike the WACC, accounts for the length of the debt term, the IPP reserve fund, property taxes, and depreciation. It measures the total financing burden in each year of the plant's life, determines the net present value (NPV) of this burden using the appropriate discount rate, and then levelizes the NPV over the life of the plant. The result is the total cost of financing expressed as an annual payment, which is the same in real dollars in every year of the plant's life. This annual payment can also be expressed as a percentage of the original capital cost, which gives us the capital charge rate (see Table 2).

TABLE 1.—WEIGHTED AFTER-TAX COST OF CAPITAL

	Utility	IPP
Debt fraction	[1]50.0	[1]80.0
Equity fraction	50.0	20.0
Interest rate	9.5	10.5
Equity return	12.0	15.0
WACC	9.1	8.5

[1] Percent.

In order to compare the total cost of financing in isolation from other factors, we assumed that IPPs and utilities have identical capital costs and construction times. We then computed the capital charge rates using the assumption about debt-to-equity ratios, interest rates, and equity returns made in Table 1, and the further assumptions summarized in Table 2.

The utility capital charge rate was computed using standard utility rate-of-return accounting procedures to determine the annual revenue requirements associated with new capital investment. The IPP capital charge rate was determined from a standard IPP project finance model, which also determines the annual revenue requirements needed to support new IPP capital investment. The utility discount rate was used to evaluate each case, which is consistent with the conventional practice for comparing IPP proposals to a utility's avoided costs.

The result is a capital charge rate, or total cost of financing, approximately 4 percent higher for IPPs than for utilities. This occurs because the financing burden on IPPs is higher during the first 15 years of a plant's life than the burden on utilities, since IPPs must maintain a cash reserve fund and pay down their entire debt balance during that span. Conversely, the burden over the final 15 years is higher for utilities because IPPs have retired their debt. The net effect, though, is a deferral of the financing burden by utilities, which results in a capital charge rate for utilities that is slightly lower than that for IPPs.

Though altering any of the assumptions used in these calculations can widen or narrow the capital charge rate gap between IPPs and utilities, it is clear that there is no systematic unfair financing advantage for IPPs. The amount of leverage, the equity return and interest rate, and the debt term will all vary significantly from project to project, and in any given case either an IPP or a utility may recognize a competitive financing advantage.

On average, however, our and other analyses suggest that IPPs bear at least the same financing burden as do utilities. This demonstrates that highly leveraged project financing is not an unfair advantage for IPPs, but incurs offsetting costs in the financial markets in the form of higher interest rates, shorter debt maturities, and contractual restrictions on cash flow. There is no free lunch in the financial markets.

This implies that the financial markets do a more than fair job of assessing the risks involved in lending to both IPPs and utilities, and of providing funds on terms concomitant with those risks. The markets have determined that it is prudent to use highly leveraged structures for IPP projects, because those projects have long-term power purchase contracts and do not bear electricity market "demand" risk. On the other hand, because IPP debt is secured only by the assets of a particular project, the market offers IPPs shorter debt terms and higher interest rates than utilities receive, and requires cash reserve funds to insure against under performance. In short, IPPs and utilities receive very different financing terms because they finance their capital investments with fundamentally different structures. Thus, it is perfectly "fair" that their financing terms are not the same (indeed, it would be strange if they were). The financing burden for IPPs and utilities is determined by the market, and is appropriate for the types and magnitude of risk each brings to lenders and equity investors.

COMPETITION LOWERS COSTS

If the lower cost per kilowatt hour (kwh) of electricity produced by the independent power industry is not a result of debt leveraging, then what is the cause? Our experience suggests that the reason for IPPs' lower costs is price competition.

Independent power producers must compete (with utilities and with each other) for a share of the power generation market. And the generation market has become fiercely competitive: To receive a long-term power sales agreement, IPPs often must win a competitive bid or successfully execute a competitive negotiation. In a typical bid, the number of megawatts offered normally exceeds the number awarded by a ratio of 13 to 1. And preparing a bid or negotiating a proposal has become expensive, especially since the purchasing utilities often award contracts only to bids with firm site plans, signed fuel contracts, firm engineering estimates, and substantial progress in obtaining the necessary environmental permits. Furthermore, the profits of the QFs and IPPs competing for these power sales agreements are not subject to price regulation by state utility commissions. This creates a natural incentive for IPPs to lower their costs—to win contracts and, hopefully, to make a profit.

TABLE 2.—CAPITAL CHARGE RATE

	Utility	IPP
Debt life	35	15
Reserve fund	NA	([1])
Book life	35	35
Tax life	20	20
Discount rate	[2]10.75	[2]10.75
Income tax rate	[2]34	[2]34
Property tax rate	[2]4	[2]4
Inflation	[2]4.5	[2]4.5
Capital charge rate	[2]9.76	[2]10.17

[1] Annual deposit: ½ of pre-tax cash flow. Maximum balance: ½ of annual debt payment.
[2] Percent.

As participants in the independent power industry since its inception, we have witnessed first hand how price competition creates incentives for IPPs to find innovative ways to lower power generation costs. The following factors summarize the experience of the IPP industry to date.

Turnkey construction: One of the major problems that has plagued the utility industry has been major cost overruns from "cost-plus" construction contracts. To avoid the risk of cost overruns, most IPP projects are constructed with "turnkey" fixed-price construction contracts, where the architect/engineer (A/E) agrees to build the plant at a negotiated fixed price. The A/E firm absorbs the risk of construction cost overruns and has an incentive to lower its construction costs and make a profit. Such construction cost overruns can be substantial—as much as 20 to 50 percent for utilities, with even bigger overruns likely for larger plants.

Cost overruns became a major problem for utilities in the 1970s when utility commissions began to disallow costs that were deemed the result of imprudent management practices. This trend continued in the 1980s, as $13 billion in plant investments were disallowed from 1984 to 1988, representing about 14 percent of the total capital costs for these (mostly nuclear) plants. In this regulatory environment, utilities became reluctant to construct their own plants, fearing the risk of making capital investments with no returns. The option of signing a purchased power contract with an independent power producer became (and continues to be) an attractive alternative for utilities.

Bidding down capital and fuel costs: Another practice that reduces the cost of IPP projects is competitive bidding for construction and fuel contracts. In order to get the best price and terms for plant construction and fuel contracts, IPPs normally conduct a competitive solicitation of bids for these major cost items. Because vendors must compete for IPP business, and because IPPs must beat utilities' avoided costs, IPPs are able to negotiate capital and fuel contracts at a discount from utility costs. Our experience suggests that competitive bidding for construction and fuel contracts can save IPPs up to 5 percent.

Shorter construction times: IPPs have typically constructed their plants in less time than is normal for utilities. Perhaps the most successful IPP in this area is Cogentrix, which constructs its coal-fired plants in roughly two years. Some of the techniques used to reduce construction time are standardized plant designs, tight control of parts and materials, and incentives for crews who meet or beat deadlines. Lowering construction time saves costs in two ways—it almost always assures that the project will come in at or under budget, and it saves on interest costs. The difference in total capital cost between a project that takes two years to construct versus four is roughly 15 to 20 percent. Even a three-year construction period can save about 8 to 10 percent on total capital costs.

Higher plant availability: Independent power projects have achieved higher plant availability factors than utilities. IPP coal plants, for example, have averaged roughly 88 to 90 percent availability, compared to 81 percent for utility coal plants of comparable size. Gas plants show a similar difference—IPPs have averaged 94 to 96 percent availability, compared to 87 to 92 percent for utility-owned plants with equivalent specifications. Since most IPP plants are relatively new, this difference may not be significant—it might simply reflect the fact that plants typically work better when they first come on line. But our experience supports the conclusion that this difference in IPPs' availability might be caused by price competition incentives; IPPs are normally paid more if their plants run better, while utilities are not. The added profit is a powerful motivator to perform preventive maintenance, reduce outages, and operate plants more efficiently—all of which can significantly increase a plant's availability.

New technologies: Independent power producers have been notably more aggressive in bringing new power generation technologies into commercial operation. For example, AES Corporation now has 940 megawatts of fluidized-bed coal plant either in operation or under construction. Destec has a commercial-scale integrated gasification combined cycle (IGCC) technology that it will construct under commercial terms. U.S. Windpower has a next-generation wind turbine that has proved competitive in bidding situations. while it is hard to quantify the potential cost reductions associated with new technologies, they often can offer cost savings by improving efficiency, reducing overall capital costs, or providing superior environmental performance.

When these factors are converted into a cents/kwh measure of the cost of delivered power, their combined effect on total IPP costs compared to utilities (see *Table 3*) can be significant—this analysis suggests a potential cost savings of 5 to 15 percent.

None of these practices are unique to IPPs—utilities could cut costs using these or other methods as well—and in fact, some do. But because utilities' profits are regulated, they have less *incentive* to cut costs.

There is little question that IPPs have consistently demonstrated the ability to achieve lower costs of generation than regulated utilities. But some advocates would have us (and the Congress) believe that IPPs obtain their cost advantage by using highly leveraged project financing that shifts risk to their utility customers. The conclusion, if one swallows the argument, is that IPPs obtain their cost advantage on the backs of their own utility customers. This accusation is unfair.

TABLE 3.—EFFECT OF COMPETITION ON IPP COSTS

	IPP	Utility	Reduction in cost/kwh
Turnkey construction.	Turnkey	Cost-plus	Avoids overruns.
Bidding down capital and fuel costs.	Profit incentives	Pass-through	5-percent utility costs.
Construction time	33 months	48 months	10-percent reduction in capacity costs.
Availability:			
Coal	88–90 percent	81 percent	5–7 percent reduction in capacity costs.
Gas	94–96 percent	87–92 percent	
Lower O&M costs	Profit incentives	Pass-through	Continued improvements.
New technologies	AFB,IGCC	PC	Increased efficiencies, environmental progress.

TABLE 3.—EFFECT OF COMPETITION ON IPP COSTS—Continued

	IPP	Utility	Reduction in cost/kwh
Total cost	85–95 percent of avoided cost.	Avoided cost	5–15 percent.

No matter how much analysis is done, no matter how many variables are accounted for, there remains the undeniable fact that IPP projects are highly leveraged. The suspicion remains that this simply must be unfair: In the aftermath of the financial improprieties of the 1980s, "leverage" is a bad word.

But any analogies between the leveraged project financings of the IPP industry and unstable industries which have been devastated by extraordinary debt burdens are facile and invalid. The word "project" is extremely important in distinguishing IPP financing from other debt financing. IPPs are able to use leveraged project financing not because they have developed magical techniques for diverting risk, but because the loans they receive are fundamentally different from the balance sheet loans of utilities. Every dollar borrowed in IPP project financing is secured by—and only by—the assets of that project, the plant itself, and the long—term electric contract which guarantees demand. This means that the primary risk to the lender is possible under-performance of the plant. There is no demand risk, so the high level of fixed costs created by highly leveraged financing, is not as risky as it would be, for example, to a commercial real estate developer who bears the risk of evaporating demand. On the other hand, project specific loans do bear risks not present in balance sheet debt, such as underperformance at a particular plant, which in some cases warrant higher interest rates and shorter debt terms.

The bottom line is that financial institutions have done a thorough job of assessing the different risks presented by IPPs and utilities, and have developed appropriate debt structures for each. This market solution, produced by lenders without a vested interest in the competition between IPPs and utilities, is fair. Ratepayers enjoy the benefits of these lower cost, which are unlikely to be matched by utilities without an effective incentive structure. The IPP advantage is real, but it is the product of price competition and profit incentives, not of financial hocus pocus.

Mr. JOHNSTON. In effect, Mr. President, after having studied this matter now—this is the fourth year, as the Senator knows. We introduced this legislation in the last Congress and had hearings on it on and off for a couple of years, stating at the time that we wanted it to be studied, being a very complicated and deep subject.

This year we put the bill in, in this Congress, with a view to passing it. So, over a period of—this now being the fourth year we have studied this complicated subject, had studies by the staff economists, had the benefit of other studies, and let me say from the standpoint of this Senator I am totally convinced that IPP's are, first of all, at least as reliable—the article says more reliable; that the competition between utilities and IPP's is fair in that their total cost of capital is actually a few percentage points higher, as indicated by the Public Utilities Fortnightly. I think our staff study indicated that they were comparable costs. And, finally, that it is totally in the interests of consumers, which is really the reason for this legislation.

There are utilities that are for it. There are utilities against it. Some want to compete. Some fear the competition. But I think, Mr. President, the case is overwhelming that price competition has paid off in PURPA, in this very same field of electricity generation, in a competitive way.

I think the case is overwhelming that it will be very much in the interests of the consumer when we do it at large, and not limited to the limited amount which we can do in PURPA.

Mr. WIRTH. I appreciate the response by the chairman. I have long been an advocate of changes in the Public Utility Holding Company Act, and significant changes therein. I think we are headed in the right direction.

There was this remaining issue in which I am always reminded of the need for the one-armed economist. I suspect your economist will say one thing and some other utility's economist will say something else.

I found the chairman's determination to stick with what is in the bill now and his demonstration to me of where the votes were more convincing than the demonstration by the economist of what the economics were. I could count those votes a lot better than I could understand the convincing nature of the economics.

Getting in that position, I think, maybe we can, perhaps, have a chance to work on this some more, coming to a better understanding. I know Senator SANFORD is in the process of discussing with the committee an amendment that he had, to see if some language can be worked out there.

I remain troubled by this question. I know that this in some ways is at odds with the need to change the Public Utility Holding Company Act, which I think is something we ought to be doing.

In any case, I greatly appreciate the attention the chairman has given to this. He did agree to the initial amendment that I offered last spring, related to the State regulatory commissions and their authority to look at this. That was a small step in the right direction and we will keep working on it.

I thank the chairman for his forthcoming answer and for sticking with this in the way that he has.

Mr. JOHNSTON. I very much thank the Senator from Colorado. His amendment is not a small step. His amendment requires PUC's to look and study the effect of debt leveraging and calls their attention to the fact that they should make findings whether or not 35 percent equity share is appropriate. So, it directs them to do that.

I think, upon looking at each one of these things, they will do what is in the interests of the consumer and not require more equity than is required. I think that will be an experience very much like PURPA.

So, the amendment of the Senator contained in the legislation already, I think, takes a giant leap in the direction he is talking about.

Mr. WIRTH. I thank the chairman.

REGIONAL REGULATION

Mr. BUMPERS. Mr. President, Senator PRYOR and I would like to engage the chairman of the committee, Mr. JOHNSTON, in a colloquy.

Our region of the country—Arkansas, Louisiana, and Mississippi—are deeply concerned about their ability to adequately regulate multistate holding company resource planning.

Mr. PRYOR. Mr. President, judicial interpretations of the Federal Power Act have made it very difficult for over 20 State regulatory jurisdictions to protect electric consumers. These States regulate utility subsidiaries of multistate holding companies registered under the Public Utility Holding Company Act of 1935. The jurisdictions include our States—Arkansas and Louisiana—as well as Mississippi, New Hampshire, Massachusetts, Connecticut, Rhode Island, New Jersey, Pennsylvania, Ohio, Indiana, Michigan, Kentucky, West Virginia, Virginia, Tennessee, Maryland, Florida, Georgia, Alabama, Texas, and Oklahoma.

Mr. JOHNSTON. Are the Senators referring to the effect of the Mississippi Power & Light decision?

Mr. BUMPERS. Yes. As many Members of this body know, a 1988 Supreme Court decision, Mississippi Power & Light versus State of Mississippi ex rel. Moore held that FERC approval of a transaction among electric utility subsidiaries of a registered holding company preempts State regulatory review. Registered companies need only shift their operations from retail to wholesale subsidiaries, and obtain a decision from the Federal Energy Regulatory Commission [FERC] which binds State commissions.

Mississippi Power & Light therefore exposed a major gap in utility regulation. Regional holding companies are a reality. Therefore, power supply planning on a regional basis is a reality. Yet under the law today, no one has clear authority to regulate regional planning. In fact, after MP&L, State commissions regulating the subsidiaries of a registered holding company have little or no say over retail rates; construction or conservation, and are virtually powerless to enforce those priorities.

Mr. PRYOR. I want to echo Senator BUMPERS' concerns.

Mr. JOHNSTON. What is the Federal Energy Regulatory Commission role here?

Mr. BUMPERS. The FERC does not have clear authority over such regional planning because Section 201 of the Federal Power Act states that FERC lacks authority over generating facilities. Also, the Commission does not oversee utility resource planning. Nor should it. resource planning should be a local matter.

Senator JOHNSTON, nothing prevents a multistate holding company from convincing one State to permit construction of a plant, then having FERC allocate the costs of that plant to other States, even if those other States preferred conservation or power purchases over construction. States then have the worst of both worlds: preemption without planning.

Because this gap stems from interpretations of the Federal Power Act, Federal legislation is necessary. Constituents from both our States—the Arkansas Public Service Commission, the city of New Orleans and the Energy Corp.—as well as members of the electric utility community throughout the Nation, chose to work to solve these problems and are crafting a legislative proposal to restore authority to State regulators, while protecting holding companies from inconsistent decisions by those States. Mr. President, I strongly urge this body to support this proposal as it will encourage the creation of efficiencies on a regional basis while simplifying regulation and preserving the historic role of States in the regulation of utilities. I also fully expect this new legislation to enhance the quality of wholesale competition which Senator JOHNSTON hopes to stimulate through the changes to PUHCA in S. 2166.

We agree on the merit of the legislative proposal and have agreed that, in order to allow the legislative proposal to be finalized, we would not offer it as an amendment to S. 2166.

I feel very strongly about the urgency of restoring to the States the authority denied them by the Mississippi Power & Light decision and am naturally concerned about passing S. 2166 without the new legislation.

Therefore, I want to confirm with the Senator from Louisiana that we will work together to complete the drafting of the new legislation and then bring it to the floor for Senate action as soon as possible.

Mr. PRYOR. I want to say for the record that I feel very strongly about this issue too and hope we can work together toward prompt enactment of regional planning legislation.

Mr. JOHNSTON. I share the concerns of the Senators and they have my commitment that I will cosponsor the legislation, hold hearings on it, and work for early enactment.

SECTION 6301

Mr. BUMPERS. Mr. President, I would like to engage the distinguished chairman of the Senate Energy Committee, Senator JOHNSTON, in a brief colloquy.

Section 6301 of S. 2166 amends the Public Utility Regulatory Policies Act by adding a provision that State regulatory agencies shall allow electricity rates to reflect expenditures and investments in energy conservation, energy efficiency, and other demand-side management measures. Does this mean that State commissions must permit utilities to increase rates to recover their costs in those programs?

Mr. JOHNSTON. No. Section 6301 interacts with PURPA's requirement that a State regulatory authority formally consider whether to adopt the rate making standards set forth. The State regulatory body can, after consideration, adopt all or part of the standard, or reject it in its entirety. The final decision rests with the State regulatory body.

I might add that what the State regulatory body is to consider is whether investments by an electric utility in energy conservation, energy efficiency resources, and demand-side management should be as profitable as investment in new generation facilities. We by no means are mandating excess returns on such investments, and State regulatory bodies will and should consider the relative risks as well as rate payer benefits in establishing such rates.

Mr. BUMPERS. I thank the Senator. My last question has to do with the definition and meaning of investments and expenditures for energy conservation, energy efficiency resources, and demand-side management. The chairman is aware that a creative thinker could justify almost any investment as an investment in energy conservation. And I know that the chairman is also aware that State commissions across the country are trying to define energy conservation programs. Demand-side management is generally understood by regulators to include four different types of utility sponsored programs that affect customer energy consumption patterns—conservation, load management, fuel substitution, and loan building.

Conservation programs reduce electricity and/or natural gas consumption during all or significant portions of the year. Load management programs may either clip electricity peak demand or shift demand from on-peak to non-peak periods.

Fuel substitution increases annual electric or gas consumption by inducing the choice of one fuel over another. Load building programs increase consumption by increasing sales.

Some programs are highly controversial. Fuel substitution programs, for example, may involve competing electric and gas utilities' offering subsidies to induce consumers to switch from electricity to gas, or vice versa. The State regulatory body in my State and those in other States are currently evaluating utility promotional prac-

tices and I have no desire to intrude on their deliberations. Are we blessing, as Federal policy, demand-side management programs designed to induce fuel switching and load building, as well as true conservation programs?

Mr. JOHNSTON. No. That is not our intent. Such as interpretation would be directly at odds with what S. 2166 is all about. It would be inconsistent with S. 2166's Findings and Purposes, and especially at odds with the objectives of Title V, which is entitled "Energy Efficiency." The committee was aware of the Senator's concern.

Let me refer you to page 262 of the committee report. There we stated that:

The new rate making and other standards added to section 111 in new paragraph (7) are only intended to encourage efficiency in the provision of electricity to consumers. The committee does not intend such standards to be used in any context other than one which would result in less energy usage and correspondingly less consumption of our Nation's energy resources. To that extent, these standards are not to be construed as promoting rate recovery for programs that result in fuel switching or increased energy usage over an existing or available energy alternative. The purpose and intent of this legislation is the achievement of less energy usage through conservation measures and reduction in energy demand.

Mr. BUMPERS. I thank the distinguished chairman.

The PRESIDING OFFICER (Mr. BRYAN). The Senator from Colorado.

Mr. WIRTH. Mr. President, in July 1991 President Bush signed the London Economic Summit of 1991. That was an economic declaration entitled "Building a World Partnership." In that, the G-7 countries made the following statement which we agreed to along with the other six countries. This was signed by the current administration.

We will also seek to improve energy efficiency and to price energy from all sources so as to reflect costs fully, including environmental costs.

In this legislation we have come a long way to meet the first commitment in that statement. We have sought, and I think effectively, improved energy efficiency. There is a great deal promoting energy efficiency in this legislation. I think we have come a long way and we are going to save the country and our economy a great deal of energy—and money—with this emphasis.

Unhappily, we have not done so well on the second part, "to price energy from all sources so as to reflect costs fully, including environmental costs."

In title 1 of this legislation we require the Department of Energy, the Secretary, to:

Develop a least-cost energy strategy in which the Secretary is required to give full consideration to all the direct and quantifiable net costs for the resource over its available life, including the costs of production, transportation, utilization, waste management, environmental compliance and, in the case of imported energy resources, maintaining access to foreign sources of supply

The last part of that is very important. We have to begin to factor in here the cost, for example, of an enormous military force keeping open lines to the Persian Gulf. Therefore that price ought to be factored into this and we ought to, obviously, be focusing more on domestic resources wherever possible. We have attempted to do that by really pushing our use of domestically producted natural gas, in the legislation.

On the environmental side we have done less well. This language only includes reference to environmental compliance, and not to full environmental costs. In this title, and again in the utility regulatory reform section, I had attempted in the committee to add language that encouraged DOE and State PUC's to examine the full range of costs associated with energy supply and demand.

This means the externalities; not only the cost of compliance, which is a quite narrow consideration, but the broader the cost of the external impacts that various energy sources are going to have on the outside world.

We are familiar with those. We had one debate earlier about externalities when we were talking about the hole in the ozone and the impact that use of a particular chemical compound has.

If we are going to be really serious about accounting for full energy costs, we have to factor into the cost of energy the environmental impacts of burning that energy source or using that.

For example, in the area of nuclear energy, we clearly should be looking at the long-term cost of waste and waste disposal. If we are talking about burning of fossil fuels, we have to make a distinction between coal, oil, and natural gas, some of which have clearly greater environmental costs than others.

A recent National Academy of Sciences report recommended that:

Energy production and use should reflect the full costs of associated environmental problems * * * full social cost pricing is a goal toward which to strive.

That is the essence of the language I attempted to offer in the committee. The full environmental cost language was struck in the committee, and was replaced with reference only to the very narrow concept of environmental compliance.

Mr. President, I raise this at this point, but I am not going to offer the amendment to try to restore environmental costs. Clearly that is going to be what I think the chairman described as a deal-buster. It is an issue that is very complicated. It has become extremely controversial, and I understand that.

But the chairman has committed to me, when we get into upcoming global climate change hearings in the Energy Committee and in related hearings, part of the emphasis of those must be on coming to understand full environmental costs. Twenty-six State regulatory commissions are already doing it. If 26 States are doing it, certainly the Federal Government can do that. Twenty-six State regulatory commissions have in some way examined this issue. Certainly we can get our own Department of Energy to do so.

Mr. President, I ask unanimous consent to print in the RECORD a very good discussion of the need to internalize environmental costs, taken out of Project 88 Round II, a study sponsored by the late Senator Heinz and myself. This is a very good discussion of the need to do this, and where we are in the science of doing it.

I also ask unanimous consent to print in the RECORD at this point the economic declaration signed by the President at the London Economic Summit, which refers to the need for considering the environmental costs of energy.

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

PROJECT 88—ROUND II

INTERNALIZING ENVIRONMENTAL COSTS

Richard Clarke, the CEO of Pacific Gas & Electric Company, has directed his management to "make environmental considerations and concerns part of any decision you make right from the beginning. Don't think of it as something extra you throw in the pot."[1] Consistent with this call for including environmental concerns in the decision process is the general notion of "environmental costing." Unless the prices of energy alternatives reflect their environmental as well as their direct (internal) costs, true least-cost objectives can not be achieved. The problem in the greenhouse context is that the costs of alternative fuels are typically not affected by their respective emissions of carbon dioxide. One possible approach to this problem would be through the use of CO_2 charges, as examined earlier in this chapter. Such charges may eventually be implemented to comply with future international agreements. In the meantime, a potential approach could be for state and Federal planners and utilities themselves, when comparing alternatives for meeting long-term energy needs, to impute to each energy source a carbon-based penalty that varied with its relative level of CO_2 emissions[2] or more broadly multiple penalties which varied with the environmental costs of some set of emissions, presumably including CO_2 and SO_2.

Despite the soundness of the basic idea of environmental costing, the difficulty of properly designing such systems ought not to be underestimated, as evidenced by the serious flaws found in most of the mechanisms

[1] See: Kirkpatrick, David. "Environmentalism: The New Crusade." *Fortune*, volume 121, number 4, pp. 44-55, February 12, 1990.

[2] Care must be taken to ensure that such a program does not replace carbon dioxide emissions with offsetting increments of other greenhouse gases. This is particularly important since CO_2—despite representing the largest aggregate impact on global warming—has a smaller per-unit impact than some of the other greenhouse gases. See: Rodhe, Henning. "A Comparison of the Contribution of Various Gases to the Greenhouse Effect." *Science* 248(1990):1217-1219; and Houghton, Jenkins, and Ephraums, *op. cit.*

thus far given serious consideration by state regulatory bodies. As outlined above, the damages (of emissions) associated with the combustion of a given fuel constitute the "environmental cost" which ought to be considered when comparing alternative energy options. Yet every state commission which ordered consideration of environmental externality costs through 1990 chose to ignore these (economic) impacts in favor of a "proxy"—the cost of controlling pollutant emissions. By 1990, 26 utility regulatory commissions had at least initiated formal consideration of including environmental costing in utility planning, bidding, or other resource-selection procedures. Of these, 18 had issued orders or passed legislation requiring utilities to incorporate environmental costing in the planning or bidding process, and in every case, control costs had served as the basis for quantification.[3]

Pollution control costs *cannot* serve as an adequate proxy for pollution damages.[4] Indeed, the costs of controlling a given pollutant do not necessarily bear any direct relation whatsoever to the environmental damage which it causes. Relying upon control costs, instead of true economic measures of environmental damages, as the basis for quantifying "environmental adders" may serve, at worst, to offer less environmental quality, and, at best, to offer environmental protection at far higher costs than necessary. Based upon this flawed evaluation methodology, environmental costing is unlikely to lead to an appropriate mix of electricity-generation sources. Why has there been such a rush to embrace a fundamentally flawed approach? The answer seems to be the same as the reply to the old query about why someone is looking for a lost quarter under a lamp post: because it is an easy place to look. Unfortunately, ease of design and implementation are by no means sufficient conditions for effective regulation.[5]

The right way to carry out environmental costing is to evaluate in economic terms the environmental damages of alternative energy options. This is the conceptually correct approach, but the difficulty of making this approach operational should not be underplayed. Substantial uncertainty is associated with all of the available methods of valuing environmental damages. Great advances have been made, however, over the past two decades in the major approaches to estimating the economic damages of pollution: preference-revealing surveys; Hotelling-Clawson-Knetsch methods; hedonic pricing studies; and experimental markets.[6] Indeed, these methods are now used somewhat routinely to produce economic estimates of environmental damages in a variety of contexts, including: Executive Order 12291; the Natural Resource Damage Assessments mandated by CERCLA (the Superfund law); and environmental litigation, as in the Exxon Valdez case.

Thoughtful application of these methods of evaluating the damages of pollution can produce appropriate environmental costing.[7] EPA and other agencies of the Federal government could be of great assistance in this regard by helping states and their utility commissions begin to develop correct procedures for evaluating the environmental costs of alternative energy options (on both the supply side and the demand side).[8]

[London Economic Summit 1991]

ECONOMIC DECLARATION: BUILDING WORLD PARTNERSHIP

1. We, the Heads of State and Government of the seven major industrial democracies and the representatives of the European Community, met in London for our seventeenth annual Summit.

2. The spread of freedom and democracy which we celebrated at Houston has gathered pace over the last year. Together the international community has overcome a major threat to world peace in the Gulf. But new challenges and new opportunities confront us.

3. We seek to build world partnership, based on common values, and to strengthen the international order. Our aim is to underpin democracy, human rights, the rule of law and sound economic management, which together provide the key to prosperity. To achieve this aim, we will promote a truly multilateral system, which is secure and adaptable and in which responsibility is shared widely and equitably. Central to our aim is the need for a stronger, more effective UN system, and for greater attention to the proliferation and transfer of weapons.

ECONOMIC POLICY

4. Over the last year, some of our economies have maintained good growth, while most have slowed down and some gone into recession. But a global recession has been avoided. The uncertainly created by the Gulf crisis is behind us. We welcome the fact that there are now increasing signs of economic recovery. Progress has been made too in reducing the largest trade and current account imbalances.

5. Our shared objectives are a sustained recovery and price stability. To this end, we are determined to maintain, including through our economic policy coordination process, the medium-term strategy endorsed by earlier Summits. This strategy has contained inflationary expectations and created the conditions for sustainable growth and new jobs.

* * * * *

15. Open markets help to create the resources needed to protect the environment. We therefore commend the OECD's pioneering work in ensuring that trade and environment policies are mutually supporting. We look to the General Agreement on Tariffs and Trade (GATT) to define how trade measures can properly be used for environmental purposes.

16. We are convinced that OECD members must overcome in the near future and, in any case, by the end of the year, remaining obstacles to an agreement on reducing the distortions that result from the use of subsidized export credits and of tied aid credits. We welcome the initiative of the OECD in studying export credit premium systems and structures and look forward to an early report.

ENERGY

17. As the Gulf crisis showed, the supply and price of oil remain vulnerable to political shocks, which disturb the world economy. But these shocks have been contained by the effective operation of the market, by the welcome increase in supplies by certain oil-exporting countries and by the actions co-ordinated by the International Energy Agency (IEA), particularly the use of stocks. We are committed to strengthen the IEA's emergency preparedness and its supporting measures. Since the crisis has led to improved relations between producers and consumers, contacts among all market participants could be further developed to promote communication, transparency and the efficient working of market forces.

18. We will work to secure stable worldwide energy supplies, to remove barriers to energy trade and investment, to encourage high environmental and safety standards and to promote international cooperation on research and development in all these areas. We will also seek to improve energy efficiency and to price energy from all sources so as to reflect costs fully, including environmental costs.

19. In this context, nuclear power generation contributes to diversifying energy sources and reducing greenhouse gas emissions. In developing nuclear power as an economic energy source, it is essential to achieve and maintain the highest available standards of safety, including in waste management, and to encourage co-operation to this end throughout the world. The safety situation in Central and Eastern Europe and the Soviet Union deserves particular attention. This is an urgent problem and we call upon the international community to develop an effective means of coordinating its response.

20. The commercial development of renewable energy sources and their integration with general energy systems should also be encouraged, because of the advantages these sources offer for environmental protection and energy security.

Mr. WIRTH. Mr. President, again, in the spirit of cooperation, I want to assure the Senator from Wyoming that I am not going to be offering my amendment at this point. We are making a lot of progress on the bill now, absent this matter, but we will be back on this

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[3] See: Cohen, S. D., J. H. Eto, C. A. Goldman, J. Beldock, and G. Crandall. "Environmental Externalities: What State Regulators Are Doing." *The Electricity Journal*, Volume 3, Number 6, July, 1990, pp. 24–35.

[4] Indeed, in those rare circumstances in which incremental damages of pollution might actually be equal to the incremental costs of control, there should be *no* additional penalty placed on the given fuel or source. To do so would worsen, not improve, the situation, i.e., welfare would be reduced since any reduction in emissions would bring greater costs than benefits.

[5] See: Krupnick, Alan. "The Environmental Costs of Energy Supply: A Framework for Estimation." Unpublished manuscript, Resources for the Future, Washington, D.C., December 1989.

[6] There are three principal methodologies for evaluating the benefits (the avoided damages) of environmental protection. One approach is the preference-revealing survey, usually referred to as the contingent valuation method. The second principal approach is inference from actual market behavior; this includes two distinct methods: the Hotelling-Clawson-Knetsch (or travel cost) method and hedonic pricing studies. The third principal approach is the use of experimental markets. See: Mitchell, Robert Cameron and Richard T. Carson. *Using Surveys to Value Public Goods: The Contingent Valuation Method*. Washington, D.C.: Resources for the Future, 1989; and Freeman, A. Myrick III. "*Methods for Assessing the Benefits of Environmental Programs.*" *Handbook of Natural Resource and Energy Economics, Volume I*, eds. Allen V. Kneese and James L. Sweeney, pp. 223–266. Amsterdam: North Holland, 1985.

[7] The U.S. Department of Energy is currently sponsoring an effort to develop environmental (and energy-security) external cost estimates, in cooperation with Oak Ridge National Laboratory and Resources for the Future. A similar effort is ongoing in New York State, where a model is being developed for potential use by electrical utilities to estimate environmental costs of alternative energy sources. For further discussion of how to carry out correct environmental costing, see: Krupnick 1989, *op. cit.*

[8] A step in the right direction was made in the new Clean Air Act amendments, which require the Federal Energy Regulatory Commission, in consultation with EPA, to develop models for incorporating net environmental benefits into the regulatory treatment of renewable energy.

issue, as on others that have broad implications.

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

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

(1) Amend section 1202(c)(2) on page 15, line 11, by striking the word "compliance", and inserting the word "impact";

(2) Amend section 6301 on page 158, line 24, by striking the word "compliance", and inserting the word "impact".

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

PROPOSED WIRTH ENVIRONMENTAL EXTERNALITIES AMENDMENT

Mr. FORD. Mr. President, this amendment would reverse a vote by the Senate Energy Committee during the markup last May which specifically substituted "compliance" for "impact."

The current provision of S. 2166 would require State commissions to determine the system cost of new utility energy resources by including the cost of compliance with environmental requirements. The amendment would modify this to require the consideration of the cost of environmental externalities, that is the costs of any impacts that may remain after full compliance with environmental laws.

First, an externality is any societal cost or benefit of production or consumption which is not reflected in the price system.

Second, there is no generally accepted method of qualifying the costs of externalities, let alone for internalizing them into utility rates. The estimated values for some externalities vary by more than 1,000 percent. As a result, State commissions are likely to devise widely disparate externality values, thereby distorting energy markets.

Third, imposition of externality costs on electric utilities only promotes a piecemeal approach to addressing environmental concerns, because they totally ignore other emission sources.

This precludes use of less costly alternative measures to address environmental issues of concern.

This distorts the competitive market for electricity because many sources, including self-generation, would be exempt from the requirement to factor in externalities.

This will artificially induce shifts to other nonelectric energy sources which do not pay the costs of externalities, even though those sources may be associated with even greater environmental impacts and thereby increase rather than decrease external effects.

Fourth, State utility commissions lack the expertise and authority to address broad environmental concerns.

Fifth, it is inappropriate to single out the utility industry to go beyond existing environmental compliance requirements and require quantification of externalities.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 1594

(Purpose: To establish national energy goals in order to achieve greater energy security and in order to measure the progress of the United States toward energy security)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 1594.

Mr. BINGAMAN. 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 7, line 10, insert "reduce oil imports," before "maximize".

On page 7, line 12, strike "and".

On page 8, line 5, strike the period and insert "; and".

On page 8, between lines 5 and 6, insert the following new paragraph:

(4) the achievement of energy security for the United States will require that a long-term, comprehensive national energy policy be established and sustained.

On page 10, line 1, insert "Climate Protection" before "Goals."

On page 10, line 3, insert "CLIMATE PROTECTION" before "GOALS AND".

On page 13, line 18, strike "and".

On page 13, line 21, strike the period and insert "; and".

On page 13, between lines 21 and 22, insert the following new subparagraph:

(C) the energy efficiency, renewable energy, and oil reduction goals described in subtitle C.

On page 16, between lines 17 and 18, insert the following new subtitle:

Subtitle C—Energy Goals

SEC. 1301. ENERGY GOALS.

(a) IN GENERAL.—In order to focus and sustain a national effort toward achieving national energy security in an environmentally responsible manner, the United States shoulu pursue the national energy goals listed in subsection (b) (referred to in this subtitle as "energy goals").

(b) GOALS.—

(1) REDUCED OIL CONSUMPTION.—The oil consumption of the United States should be reduced from the 1990 level of approximately 40 percent of the total United States energy resource consumption to 39 percent by 1995, 37 percent by 2000, 35 percent by 2005, and 33 percent by 2010.

(2) REDUCED OIL IMPORTS.—The annual net oil imports of the United States should be limited to 50 percent or less of United States oil consumption.

(3) INCREASED ENERGY EFFICIENCY.—The energy efficiency of the United States should be increased to 10 percent over the 1990 levels by 1995, 20 percent over the 1990 levels by 2000, 30 percent over the 1990 levels by 2005, and 40 percent over the 1990 levels by 2010.

(4) INCREASED UTILIZATION OF RENEWABLE ENERGY.—The portion of the energy consumption represented by renewable energy sources should increase from the 1990 level of approximately 8 percent to 9 percent in 1995, 10 percent in 2000, 12 percent in 2005, and 14 percent in 2010.

SEC. 1302. REPORTS.

(a) INITIAL REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit a report to Congress setting forth a plan for the achievement of the energy goals.

(2) Contents.—In the report, the Secretary shall—

(A) make recommendations as to any additional statutory or budget authority that the Secretary determines is necessary to achieve the energy goals;

(B) describe the measures of energy efficiency that the Secretary has determined to be appropriate for each end use sector; and

(C) describe the plans developed by the Secretary for acquiring the necessary data to be used in determining the energy efficiency of each end use sector.

(b) PROGRESS REPORTS.—

(1) IN GENERAL.—Every 2 years after the initial report is submitted pursuant to subsection (a), the secretary shall submit to Congress a report, separate from the National Energy Policy Plan submitted pursuant to section 801 of the Department of Energy Organization Act (42 U.S.C. 7321), detailing the progress of the United States towards achieving the energy goals.

(2) CONTENTS.—In the report, the Secretary shall—

(A) analyze the progress towards meeting the energy goals, and, if an energy goal is not being met, identify barriers to the achievement of the goal; and

(B) make recommendations as to any change in statutory or budget authority that the Secretary determines is necessary for the timely achievement of the energy goals.

(c) ALTERNATE ENERGY GOALS.—If at any time the Secretary determines that achievement of the energy goals is impracticable, the Secretary shall, in the next report submitted pursuant to this section—

(1) state the reasons and provide an analysis for the determination; and

(2) propose alternate energy goals that the Secretary determines to be practicable.

Mr. BINGAMAN. Mr. President, this amendment that I am offering merely puts into the bill—I am a strong supporter of this legislation. Let me make that point initially, because I do believe the chairman and ranking member have done yeomen's work in bringing this legislation out of committee and bringing it to the floor of the Senate. I look forward to voting for the legislation. I have tried to assist them in keeping it together.

I do think there is one deficiency in it which is fairly major, and I am hoping that my amendment will correct that. The deficiency is that we do not have in the legislation as it presently pends before the Senate any specific goals for what we are trying to achieve. We have a great many provisions in a great many areas that affect our energy policy, but it is not clear what we are trying to accomplish in very specific terms.

The amendment I am offering has four energy goals in it. No. 1, it has a goal to reduce oil consumption. Oil

consumption in the United States would be reduced from the 1990 level of approximately 40 percent of total U.S. energy resource consumption to 33 percent instead of 40 percent by the year 2010. What we do is to set up in this amendment 5-year intervals, at which time we look to see if we are, in fact, achieving the goals that we are setting.

A second goal is reducing oil imports. Annual net oil imports to the United States would be limited to 50 percent or less of U.S. oil consumption.

Third, we would have a goal for increasing energy efficiency in the United States.

Fourth, we would have a goal for increasing the utilization of renewable energy. Again, in 5-year increments up to the year 2010.

Mr. President, these goals are not established as constraints, but instead to provide direction. The real difference between mere projections and effective goals can be summed up, in my view, in a single word, and that is commitment. The goals in the amendment are intended to be specific enough to define a destination without dictating the path that we would necessarily follow to reach those goals.

We set up goals in this area, Mr. President, in order to achieve the same kind of thing in the energy area that our President and our Governors and many of us in the Congress and in the country generally are trying to achieve in other areas of national concern, such as education.

Mr. JOHNSTON. Will the Senator yield?

Mr. BINGAMAN. Yes, I will be glad to yield to the committee chairman.

Mr. JOHNSTON. Mr. President, I appreciate the Senator yielding, and I hesitate to interrupt what is a very good speech. I had been persuaded earlier by his amendment. And I am pleased to announce that my friend, the ranking minority member, is now persuaded that we should accept this amendment. I will let him speak for himself, but I thought that might affect what the Senator had to say, and I wanted him to know that at this point.

Mr. BINGAMAN. Mr. President, I appreciate that statement by the chairman, and I do not want to keep the Senate longer than necessary on this amendment.

Goal setting is a regular tool of policymaking. It is the first step for determining appropriate policy measures. Why do we have goals in education—for example, a high school graduation rate of at least 90 percent by the year 2000; goals in health care, and goals for our defense, but goals for reducing and diversifying our energy consumption are unacceptable?

The targets I am proposing are realistic. They are consistent with environmental goals. Moreover, they are attainable, but only through concerted and consistent effort by all concerned.

Energy efficiency would help our economy in the world market place in three ways: by reducing the trade deficit, by enabling U.S. companies to produce goods at lower cost, thus making our exports more attractive, and energy efficient goods themselves would be more attractive exports.

Energy efficiency reconciles the simultaneous goals of development and environmental protection, because efficiency saves capital and decreases the production of pollutants. In 1990, energy efficiency improvements saved the U.S. economy $160 billion.

In 1990 we imported nearly 50 percent of our oil. Fifty-four percent of our trade deficit was from imported oil, $48 billion. The United States consumes 40 percent of the world's energy, which means that by taking the right steps, we can have a tremendous impact on worldwide consumption.

What this bill is not: This is not a global warming bill. The potential environmental consequences of increased carbon dioxide emissions are acknowledged, but the bill contains no specific CO_2 reduction goals. My amendment simply recognizes the no regrets approach—reducing CO_2 emissions to the extent practicable while the scientific question is still under investigation.

This is not, as some will claim, a endorsement of centralized Federal management of energy supplies and consumption. As I stated before, I do not intend to dictate the path, but to define the destination. In short, my amendment attempts to define what we mean by "greater energy security."

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. WALLOP. Mr. President, let me just say that I personally, wholly disagree with this type of amendment. One of the things that Congress has a penchant for doing is requiring enormous numbers of reports, consuming more energy in running computers, word processors, and papers than any other thing.

Also, I note that the goals that are contained within it will be reported upon. If the country meets them, fine; if the country does not meet them, also fine. It does not have any enforcement other than the Secretary would make recommendations. It does not oblige the Congress to engage, and we cannot, indeed, bind a future Congress.

So I will just say that this is typical of the monumental kind of meddling we do in the operation of Cabinets, whoever happens to be the President. Having said that, I do not find it harmful enough that we will stand here and take the time of the Senate at night to debate it and argue it at length. So I am quite willing on behalf of the minority to join the chairman and accept it.

The PRESIDING OFFICER. Is there further debate on the amendment offered by the Senator from New Mexico?

The Chair hears none. The question is on agreeing to the amendment.

The amendment (No. 1594) was agreed to.

Mr. JOHNSTON. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1595

(Purpose: To enhance the availability of petroleum from the Strategic Petroleum Reserve to certain insular areas of the United States)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. AKAKA, for himself and Mr. INOUYE, proposes an amendment numbered 1595.

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

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

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. 16102. EMERGENCY PETROLEUM SUPPLY.

(a) SHORT TITLE.—This section may be cited as the "Emergency Petroleum Supply Act".

(b) REGIONAL PETROLEUM RESERVE.—Section 157(a) of the Energy Policy and Conservation Act (42 U.S.C. 6237(a)) is amended—

(1) by designating the first and second sentences as paragraph (1); and

(2) by adding at the end the following new paragraph:

"(2) For the purpose of carrying out this section—

"(A) any State that is an island shall be considered to be a separate Federal Energy Administration Region, as defined in title 10, Code of Federal Regulations, as in effect on November 1, 1975;

"(B) determinations made with respect to Regions, other than States that are islands, shall be made as if the islands were not part of the Regions; and

"(C) with respect to determinations made for any State that is an island, the term 'refined petroleum product' shall have the same meaning as the term defined in section 3(3).".

(c) PURCHASES FROM THE STRATEGIC PETROLEUM RESERVE BY ENTITIES IN ELIGIBLE INSULAR AREAS.—Section 161 of such Act (42 U.S.C. 6241) is amended by adding at the end the following new subsection:

"(j)(1)(A) The provisions listed in subparagraph (B) shall apply with respect to each offering of a quantity of a petroleum product during a drawdown of the Strategic Petroleum Reserve.

"(B)(i)(I) Subject to subclause (II), a purchaser located in an eligible insular area, in addition to having the opportunity to submit a competitive bid, may submit (at the time bids are due) a binding offer to purchase a category of petroleum product specified in a notice of sale, and shall thereupon be obligated to purchase the petroleum product at a price equal to the average of the successful bids made for the remaining quantity of the

petroleum product within the category that is the subject of the offering.

"(II) A binding offer made pursuant to subclause (I) shall be accompanied by a certification made by the Governor or other chief executive officer of the eligible insular area that the petroleum product is necessary to avert a critical supply shortage in the eligible insular area.

"(ii)(I) Subject to subclause (II), a vessel that arrives at a delivery line of the Strategic Petroleum Reserve to take on a petroleum product for delivery to a purchaser located in an eligible insular area shall be loaded ahead of other vessels waiting for delivery if the Governor or other chief executive officer of the eligible insular area has certified that delivery must be expedited in order to avert a critical supply shortage in the eligible insular area.

"(II) The Secretary may waive the priority loading requirement of subclause (I) with respect to a particular vessel waiting for delivery if the Secretary determines that the requirement is impracticable.

"(2)(A) In administering this subsection, and with regard to each offering, the Secretary shall—

"(i) impose the limitation listed in clause (i) or (ii) of subparagraph (B), whichever, results in the purchase of the lesser quantity; and

"(ii) at the request of a purchaser, adjust upward, to the next whole-number increment of a full tanker load, the quantity to be sold to the purchaser if the quantity is less than 50 percent less than a whole-number increment of a full tanker load of a petroleum product.

"(B)(i) The Secretary shall limit the quantity that any one purchaser may purchase through a binding offer at any one offering to 1/12 of the total quantity of petroleum products that the purchaser imported during the previous year.

"(ii)(I) The Secretary shall limit the quantity that may be purchased through binding offers at any one offering to 3 percent of the offering.

"(II) If the Secretary imposes the limitation listed in subclause (I), the Secretary shall prorate the quantity among the purchasers who submitted binding offers.

"(3)(i) Except as provided in clause (ii), petroleum products purchased through binding offers pursuant to this subsection shall be delivered to the eligible insular area.

"(ii) Purchasers may enter into exchange or processing agreements that require delivery to other locations.

"(4) As used in this subsection:

"(A) The term 'eligible insular area' means the State of Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(B) The term 'offering' means a solicitation for bids—

"(i) that is to be submitted not later than any specified day for a quantity or quantities of a petroleum product from a delivery line of the Strategic Petroleum Reserve; and

"(ii) for a distribution with respect to which the President has made a finding pursuant to subsection (d).".

Mr. JOHNSTON. Mr. President, this amendment on behalf of the Hawaiian Senators requires the DOE to consider Hawaii as a separate region under EPCA and considering Hawaii's geographic location, it makes sense. I ask that the amendment be passed.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. WALLOP. Mr. President, the minority is willing to accept it. May I just say to the Senator from Hawaii, he has been really quite agreeable and cordial to work with on this amendment. As the chairman will note, I was heavily against this amendment in the committee when it was first offered. The Senator from Hawaii has answered virtually every concern that I raised. I am not one of those who, having had the hoops that I laid down jumped through, figure it is time to add a third one or fourth one, so I would say that we are quite content to accept this and thank the Senator as well for his cooperation.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. INOUYE. Mr. President, I rise to speak in support of the amendment which enhances the availability of petroleum from national oil reserves to island States. The amendment requires the Department of Energy to recognize Pacific Islands as import dependent regions, allows average bid price purchasing of oil, and allows priority access to ships bound for Pacific islands.

The amendment I propose along with Senator AKAKA is of vital importance to the State of Hawaii and our American neighbors in the Pacific. I believe that U.S. citizens who happen to live in the Pacific deserve energy security similar to that enjoyed by citizens in other parts of the United States.

Hawaii is uniquely vulnerable because of its insular location, remoteness from petroleum supplies, and lack of indigenous fossil fuel resources. An energy supply disruption will curtail transportation to and from the islands, devastating the entire State economy. Hawaii is 2,500 miles from the continental United States. Accordingly, the State depends on air and water transport for passenger travel as well as for shipment of food and other supplies. The devastation will not be limited to the State's dominant industry—tourism—but will extend to the supply of basic necessities.

All the other 49 States have access to oil transported by pipeline, rail, or highway. However, in Hawaii, all of our oil and refined products arrive by ocean tanker. Our reliance on tanker deliveries makes Hawaii exceptionally vulnerable to a cutoff of oil supplies.

Furthermore, the mission of our military forces in Hawaii will be compromised by inadequate petroleum stocks. In such an emergency, the energy security of the entire Pacific will be diminished. Hawaii has a general, moral, and practical responsibility to assist American territories throughout the Pacific. The Federal Government's obligation to the security of the Nation extends to the Pacific, not only for Hawaii but for our trust territories as well. Our national security is strengthened by providing for the energy needs of the 66,000 Hawaii residents who work at Pearl Harbor and the other military bases throughout the Pacific.

This amendment requires the Department of Energy to consider insular areas as separate regions for the purpose of calculations for distribution of national strategic petroleum reserve [SPR] oil. The Pacific islands are located in Federal Energy Administration Region 5, a region dominated by the consumption and production patterns of the Western United States, including California and Alaska. The overall region 5 energy profile masks the heavy import dependence of insular areas in the Pacific. Pacific area vulnerability is simply ignored without separate consideration.

This amendment also allows Pacific islands access to SPR reserves at the average bid price of an SPR offering. Without this mechanism, energy companies in the Pacific could face supply shortages in the event of an unsuccessful bid.

Finally, this amendment allows priority access to SPR loading docks. The distance between the SPR loading docks and Honolulu—by way of the Panama Canal—is over 7,000 miles—more than one-quarter the distance around the globe. The distance to Pacific Territories is even greater. The total sum of the amount of time between the decision to draw down reserves, time it takes to solicit and accept bids for SPR oil, time to gain access to loading docks, and time needed to transport oil to Pacific islands is so large that it becomes obvious that Pacific islands are subject to a very, very long wait for urgently need supplies.

Since budget constraints have impeded realization of our regional petroleum reserve goal, the amendment before you proposes a cost-effective way of addressing the problem in the interim. The provisions of this amendment would give us some measure of assurance that the economic well-being of our citizens is protected. I urge my colleagues to support our amendment.

Mr. AKAKA. Mr. President, on May 15, 1991, I introduced S. 1078, the Emergency Petroleum Supply Act, a bill to ensure the insular areas of the United States guaranteed access to the strategic petroleum reserve during an oil supply disruption. Senator INOUYE joined me in sponsoring this bill.

The Persian Gulf war was not the first time in recent memory that we have faced a major oil supply disruption. Iraq's invasion of Kuwait triggered the third major disruption of world oil supplies in the past 20 years.

Once more we were reminded of our precarious dependence on foreign oil. That is why I have joined my colleagues on the Senate Energy and Natural Resources Committee in advancing a national energy strategy which will take concrete steps to improve America's energy future.

Fortunately, we have a resource in place to insulate U.S. consumers from

the energy price shocks which occur during such a crisis. When an oil supply disruption hits, we can turn to the strategic petroleum reserve. This emergency reserve, located in Louisiana and Texas, holds 575 million barrels of crude. And under legislation passed by Congress in 1990, we have committed to expand the strategic petroleum reserve to 1 billion barrels.

During the gulf crisis, we witnessed these emergency reserves in action. On January 16, the day Operation Desert Storm was launched, the President authorized the first emergency drawdown of the petroleum reserve. Fortunately, the war with Iraq was short lived and the SPR drawdown was very limited.

Had we been hit by a more severe oil supply disruption, these emergency reserves would have protected the continental United States from severe economic harm. Hawaii and the territories would not have been so fortunate, however, Hawaii's only means of access to the strategic petroleum reserve is by tanker delivery from the Gulf of Mexico through the Panama Canal. Unlike the mainland, which has access to oil transported by pipeline, rail, or highway, all of Hawaii's crude oil and refined products arrive by ocean tanker. Our total reliance on such deliveries makes Hawaii exceptionally vulnerable to a cutoff of oil supplies.

Studies commissioned by the State of Hawaii have determined that the delivery time for strategic petroleum reserve oil to Hawaii from the Gulf of Mexico would be as much as 53 days. This exceeds the State's average commercial working inventory by 23 days.

That's why an oil supply disruption is Hawaii's greatest nightmare. As I have said before, when the Middle East sneezes, the mainland may catch a cold, but Hawaii comes down with double pneumonia. Clearly, we have good reason to be concerned about the ability of the strategic petroleum reserve to serve Hawaii in a crisis. That is the problem my amendment is designed to address.

The objective of the amendment pending before the Senate can be summed up in one word, "access." Hawaii and the territories, because of their tremendous distance from the gulf coast, must be guaranteed secure access to the strategic petroleum reserve as well as access to the SPR loading docks.

My bill accomplishes both these objectives. First, it provides that energy companies serving Hawaii and the territories will have two methods of bidding on SPR oil. Like any other potential bidder, companies may bid for SPR oil on a competitive basis—and hope that their bids are successful.

This measure would also provide a second mechanism to guarantee an award of SPR oil. Companies serving insular areas would be able to submit binding offers for a fixed quantity of oil at a price equal to the average of all successful bids. This concept is modeled after the way the Treasury Department allows the general public to submit binding offers to purchase Treasury bills. The price to be paid under this binding offer arrangement would equal the average price paid for all successful competitive bids at a given SPR offering. Thus insular areas would have access to oil at a fair price and the Department of Energy would be guaranteed a fair return on the SPR oil sold under this amendment.

Without this mechanism, insular areas could face supply shortages during an oil emergency in the event they did not submit a successful bid through the competitive offering.

This change is designed to combat the fear that our refiners would not be able to bid successfully for the limited quantity of oil being released from SPR storage. Unsuccessful bids could result in severe shortages of oil, a nightmare we hope to avoid.

The second change proposed by my amendment addresses the problem of delay. It would grant ships delivering petroleum to Hawaii and the territories expedited access to strategic petroleum reserve loading docks. Everyone would agree that it would be a terrible misfortune if deliveries to Hawaii or some other oil-starved territory were further delayed because the ship scheduled to carry this oil was moored in the Gulf of Mexico, waiting in line for access to the SPR loading docks.

As most grade school geography students know, Hawaii is a long way from the Gulf of Mexico, especially when you have to go through the Panama Canal. The distance between the strategic petroleum reserve loading docks and Honolulu—by way of the canal—is more than 7,000 miles. Putting this in perspective, 7,000 miles is more than one-quarter of the distance around the globe. The problems of the other Pacific Territories are even more acute. American Samoa is 8,000 miles by ship from the SPR facilities and Guam is over 10,000 miles distant from these reserves.

But distance alone is not the issue. When you add together the time between the decision to draw down the reserves and the time when oil from the reserves actually reaches our shores, the seriousness of the problem emerges. It takes time to solicit and accept bids for SPR oil, time to locate and position tankers, time for tankers to wait in line to gain access to SPR loading docks, and time to transit through the canal to these insular areas.

Obviously, insular areas in the Pacific are at the end of a very, very long supply line. People often overlook the fact that insular areas have a limited supply of petroleum products on hand at any one time. While we are waiting for emergency supplies of oil to arrive, petroleum supplies can begin to run short.

Finally, my amendment requires the Department of Energy to consider insular areas to be separate Federal Energy Administrative regions for the purpose of making determinations or calculations under the Energy Policy and Conservation Act [EPCA].

Currently, the Pacific Territories and Hawaii are located in Federal Energy Administration Region 5, a region which is dominated by the consumption patterns of California, Oregon, and Washington and the production patterns of Alaska and California.

Obviously, the oil supply and consumption picture of the Pacific islands are radically different from the region as a whole. The total petroleum demand for these insular areas is less than 1 percent of the region 5 demand. Yet because they are lumped together in the same region, the overall region 5 energy picture masks the heavy import dependence of the insular areas.

This section establishes a new requirement that insular areas shall be considered to be separate Federal Energy Administrative regions for the purpose of making determinations or calculations under EPCA. There is no requirement to expand the number of energy regions, but merely an obligation to make determinations as if the insular areas were separate regions.

Among the EPCA determinations to which this change would apply are whether an insular area imports more than 20 percent of its oil during a 24-month period—that is, whether the region is, or has, become import dependent, and whether a region has ready access to a 90-day supply of oil.

Mr. President, these provisions are vitally important to the energy security of Hawaii, and I urge their adoption.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 1595) was agreed to.

Mr. JOHNSTON. I move to reconsider the vote, and I move to lay that on the table.

The motion to lay on the table was agreed to.

OIL PIPELINE REGULATORY REFORM

Mr. BREAUX. Mr. President, I have been, and am, an advocate of economic regulatory reform for oil pipelines. For more than a decade the Federal Energy Regulatory Commission has had jurisdiction over the industry. It has yet to settle some of the most fundamental matters of procedural practice and ratemaking methodology. I believe the Commission requires some legislative direction to encourage it to address and resolve these matters. Regrettably, that direction is not included in S. 2166. There are other important subjects which S. 2166, unfortunately, does not address.

However, there are provisions in H.R. 776 which do deal with oil pipelines. They call on the FERC to undertake two rulemakings, one procedural and the other substantive. The procedural rulemaking would fashion a workable set of practices and a rational scheme of procedure respecting tariff filings, protests, responses, settlements, dismissals and standing of parties. In the substantive rulemaking, the Commission would establish a simplified ratemaking methodology appropriate to a competitive industry which would encourage investment while protecting captive shippers.

Finally, H.R. 776 would find rates that have been in existence for a year and publicly filed with the Commission to be just and reasonable. This would provide a necessary level of certainty to the industry while removing a fertile source for the creation of the interminable, extremely costly and often inconclusive cases which we have witnessed at the FERC.

Mr. President, I sincerely hope that when these measures are considered in Conference, oil pipeline regulatory reform provisions of H.R. 776 will receive favorable attention. They are fair and they are needed. They allow ample administrative discretion to the FERC, while providing long needed relief to both carriers and shippers.

Mr. JOHNSTON. I thank my colleague from Louisiana. I am aware of his interest and concerns in this matter, and assure him the subject will be given full and favorable attention when we address it during conference.

Mr. NICKLES. Mr. President, I concur with the remarks of the distinguished Senator from Louisiana. Oil pipelines have provided this country with one of the most efficient energy transportation systems. The industry must be able to grow and expand to continue this high level of service vital to our national economy. It must have sufficient flexibility and revenues to continue to spend the sums necessary for enhanced safety and environmental protection measures. I also believe that the provisions of H.R. 776 which direct the FERC to undertake substantive and procedural rulemakings will assist in aiding the continued viability of this important industry. I hope that we would also give full and favorable consideration to these provisions.

Mr. WALLOP. I thank the Senator for his observations, and assure him that I agree that this subject should be given favorable consideration.

Mr. SEYMOUR addressed the Chair.

The PRESIDING OFFICER. The Senator from California [Mr. SEYMOUR] is recognized.

Mr. SEYMOUR. Mr. President, I ask unanimous consent to proceed as if in morning business for not to exceed 7 minutes for the purpose of introducing a bill.

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

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(The remarks of Mr. SEYMOUR pertaining to the introduction of Senate Joint Resolution 253 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. JOHNSTON and Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The chairman of the committee, Mr. JOHNSTON.

Mr. JOHNSTON. Mr. President, we will shortly propound a unanimous consent request to restrict the number of amendments relative to two subjects, nuclear matters and the Public Utility Holding Company Act.

At this point, Mr. President, there is an amendment by the distinguished occupant of the Chair with respect to the Public Utility Holding Company Act, which I hope to be able to work out.

There is another, which I had considered putting in with respect to participation of the utilities in foreign energy, foreign utility ventures, which I will not put in because Senator RIEGLE, who must be at home in Michigan because of a severe sickness of his father, has some concern about it, and we cannot work that out at this point.

Mr. DOMENICI. Mr. President, I thought the chairman was going to ask consent that there be no amendment in order. Did he say if they are to those two sections?

Mr. JOHNSTON. We are going to try to work out a unanimous consent, first of all restricted to nuclear and to the Public Utility Holding Company Act reforms, because I think those are the two most contentious parts of the bill.

Also, we will try to work that out with respect to fleets and alternative fuels.

Some of these other matters we can work out at our leisure tomorrow, and the staff can work out energy efficiency and conservation.

But if we can get these three most contentious areas of the bill worked out, then we will be able to breathe a lot easier on this bill. So I am asking all Senators who have amendments in those three areas, that is nuclear—and the only nuclear amendments I have right now are one by Senator WELLSTONE on advanced reactor preconstruction authorization; I frankly think we can work that one out easily.

There is a potential amendment by Senator BIDEN with respect to a nuclear safety board. There is a possible amendment on PUHCA on behalf of the Senator from North Carolina.

We would also want to get unanimous consent that the subject to CAFE be not open to amendment.

Mr. President, we will shortly work out that unanimous consent.

So I urgently ask all Senators who might have amendments with respect to those areas—that is, CAFE, nuclear, Public Utility Holding Company Act reform, and alternative fuels to—to please tell us of their concern because we are going to try to put a unanimous consent request together and hotline it very soon.

Does my colleague have any comment on that?

Mr. WALLOP. Mr. President, I would first ask if it is the intention of the chairman to have votes tomorrow?

Mr. JOHNSTON. It really depends on what we are able to work out. If we could close out the bill tonight with having only renewable energy, energy efficiency, perhaps OCS, if we could work out everything except those I think we might be able to avoid votes tomorrow.

Mr. WALLOP. I will say to my friend that nothing would please me more. I do not know the nature of it, but I know that there is an objection to limiting on our side votes on our return solely to Alaska.

If we could pin that down to something smaller yet——

Mr. JOHNSTON. This would not limit amendments in any other area, and in effect would preserve the right to filibuster it through numerable amendments.

Mr. WALLOP. I understand that. I do not know the nature of the reservation of additional votes besides Alaska. I am just saying that is there.

It is my hope, I say to the Senators on my side, it would be really important that we find the means to put a rope around these particular sections of the bill. I hope we can do that.

Mr. JOHNSTON. If we can have this arrangement, it would not preclude amendments later on in any of the areas, preserve the right to filibuster the whole bill, or to amend the rest of the bill. But I think we have pretty well identified now everything of interest in amendments and in nuclear, in Public Utility Holding Company Act, in alternative fuels, and CAFE.

If we can close those areas out, then the light at the end of the tunnel becomes identifiable. Otherwise, the tunnel just keeps getting longer and longer. Yesterday we picked up 20 amendments. I do not know how many we picked up today. If we can close these out, then we can give Senators a little relief from votes I believe. Otherwise, we cannot.

Mr. DOMENICI. Mr. President, will the chairman or the ranking member yield for a question?

Frankly, I believe you have done a marvelous job with this bill. I in no way intend to delay the matter with new amendments. But I have sent two amendments to you asking that you clear them.

All I want in the unanimous consent is that you make sure that I can offer them tomorrow at your leisure. One has to do with alternative transportation fuels and is nothing more than the Senate telling the Finance Committee that they ought to get on with tax policy in this area.

Mr. JOHNSTON. We have cleared it on this side.

Mr. DOMENICI. We have one for our Indian people that promotes energy resource development and energy vertical integration on Indian reservations. I think we took out everything that was objectionable.

Mr. JOHNSTON. I believe that is cleared on this side as well.

Mr. DOMENICI. Would the chairman like me to offer them now? I will. I do not need any time.

Mr. JOHNSTON. I do not know if it is cleared on the other side.

Mr. DOMENICI. Senator WALLOP, I just referred to two amendments that I have, one urging the Finance Committee to proceed with tax policy on transportation fuels alternatives, and one on Indian energy. As the Chairman said, they are cleared on his side.

Mr. WALLOP. They have been as well cleared on our side.

Mr. JOHNSTON. Let me urge the Senator to offer those en bloc.

AMENDMENT NUMBERED 1596 AND 1597 EN BLOC

Mr. DOMENICI. Mr. President, I send two amendments that I have just described to the desk and ask for their immediate consideration.

The PRESIDING OFFICER. Is there objection to the consideration of the amendments en bloc?

Mr. DOMENICI. I ask unanimous consent that they be considered en bloc.

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

The clerk will report.

The Senator from New Mexico [Mr. DOMENICI] proposes amendments numbered 1596 and 1597.

Mr. DOMENICI. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 1596

(Purpose: To encourage the Senate Finance Committee to adopt legislation that will encourage the research, development, and implementation of alternative transportation fuels and electric vehicles)

At the appropriate portion of the bill, insert the following:

SEC. .

The United States is the largest consumer of oil in the world, exhausting 17 million barrels of oil per day, a 14-percent increase since 1983.

The United States' domestic production is in decline, estimated to fall below nine million barrels of oil per day by 1995. Today, oil imports have risen to over 40 percent of consumption, exacerbating our nation's negative balance of trade.

The Persian Gulf War commands attention to the fact that over 25 percent of America's gross oil imports are shipped from the Persian Gulf, and this reliance is the achilles heel of our nation's energy and economic security.

In the United States, the transportation sector accounts for 63 percent of total oil consumption.

The Office of Technology Assessment estimates that the United States could displace 555,000 barrels of oil per day in the transportation sector by utilizing alternative fuels like compressed natural gas, electric vehicles, traffic management systems, and by reducing the number of gas guzzling vehicles on the road.

Natural gas is a clean burning, abundant, and inexpensive national resource that could displace oil consumption in 25 percent of the current fleet vehicle population over ten years, reducing imported oil by 240,000 barrels per day.

The United States taxpayers have invested significant resources in the development of alternative transportation fuels, electric vehicles, and traffic technologies, at our Nation's laboratories, universities, and in private industry.

Both American Government and industry have met great success in the utilization of existing natural gas and electric vehicle fleets.

Encouraging Government and industry to convert to the use of energy efficient, alternative transportation fleets complements our national goals of energy independence, clean air, reduced balance of trade, and technology transfer.

The pace of improvement of clean and efficient alternative technologies is directly correlated to the level of investment in research and development.

Therefore, the Senate finds that it is in the Nation's best interest to assist the market and accelerate the adoption of alternative nonoil transportation fuels, vehicles, and traffic management systems, and the Senate will readdress this position during consideration of the appropriate tax legislation.

AMENDMENT NO. 1597

(Purpose: To promote energy development on indian reservations)

In title VI, subtitle E, on page 176, after line 22, insert the following new section:

SEC. 6508. PROMOTING ENERGY RESOURCE DEVELOPMENT AND ENERGY VERTICAL INTEGRATION ON INDIAN RESERVATIONS.

(a) DEMONSTRATION PROGRAMS.—The Secretary of Energy, in conjunction with the Secretary of the Interior, shall establish and implement a demonstration program to assist Indian tribes that wish to achieve self-determination in the energy area and that wish to promote the development of a vertically integrated energy industry on their reservations, in order to increase development of the substantial energy resources located on Indian reservations. Said program shall include but not be limited to the following components:

(1) The Secretary shall provide development grants to tribal governments to assist them to establish the legal and governmental infrastructure and obtain the managerial and technical capability they need to develop the energy resources on their reservations by themselves or through 51 percent or more tribally owned and controlled joint ventures. Each grant shall be for a period of three years.

(2) The Secretary shall provide matching grants, not to exceed 50 percent of the project costs, for projects located on Indian reservations that promote the vertical integration of the energy resources on Indian reservations, including but not limited to: oil refineries, the generation of electricity, natural gas distribution, and innovative uses of coal.

(3) The Secretary shall provide technical assistance and such other assistance as is appropriate to tribes on energy resource development and on the vertical integration of reservations energy resources.

(b) AUTHORIZATIONS.—There is hereby authorized to be appropriated $5,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of section (a)(1) and $10,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of section (a)(2).

Mr. DOMENICI. Mr. President, as the Senate proceeds with the consideration of the energy bill designed to enhance our Nation's energy efficiency and security, I would like to stress that tax legislation and energy legislation must work hand in hand to achieve our national goals.

In this regard I have proposed an amendment to the energy bill that recognizes the dual role of the tax writing and energy policy committees. My amendment encourages the Senate Finance Committee to adopt initiatives that encourage the research, development, and implementation of alternative fuels like compressed natural gas and electric vehicles.

While our Nation's appetite for oil continues to increase, our domestic ability to produce oil is in sharp decline. The Office of Technology Assessment recently produced startling statistics illustrating that without policy intervention, our Nation would not be capable of providing adequate energy in the case of a prolonged oil shortage.

Our present internal combustion automobile is responsible for 63 percent of our Nation's oil consumption. Every day, Americans exhaust 17 million barrels of oil, representing one-quarter of the daily global consumption of oil.

At the same time, our Nation is striving to clean the environment, enhance air quality, and maximize our Nation's health. Our industries are seeking economic and reliable energy sources. As a nation, we realize the costly consequences of the negative balance of trade and recognize the need to reduce our Nation's trade deficit in order to create secure jobs for Americans. Finally, we are searching for a way to protect what has become the Achilles heel of our Nation's economic and security fronts; our excessive reliance on imported oil, particularly imports supplied from the volatile Middle East.

As the Congress considers legislation to reduce foreign oil imports, we must not lose sight of the positive dividends that the transportation sector has created for this country. The availability of individual, on-call transportation is a major component of the high per capita productivity that our Nation enjoys. This productivity increases our gross national product, improves our standard of living, and creates growth and new jobs. Congressional intervention that might limit this productivity is shortsighted.

Rather, the Congress can assist the market in recognizing the benefits of

reducing oil imports by accelerating the pace at which we convert our internal combustion engines to alternative fuel or electric battery driven vehicles.

Because tax incentives are not within the scope of the energy bill, my amendment asks for the commitment by the Senate that we will address energy tax incentives within the context of the appropriate tax legislation.

Additionally, I am proud to announce my support and cosponsorship of S. 1178, the Alternative Fuels Incentive Act, that has been insightfully proposed by my colleague from West Virginia, Mr. ROCKEFELLER.

S. 1178 provides tempered tax incentives to encourage the research, development, and implementation of alternative fuel vehicles in the market. The bill provides incentives for the purchase of alternative fuel vehicles by businesses, States, and local government, as well as a tax deduction for individual consumers that purchase alternative fueled vehicles for personal or business use.

Most importantly, S. 1178 will increase the supply of alternative fuels to consumers, a crucial component for integrating alternative fueled vehicles into our transportation system, by providing a tax incentive for the installation of fueling equipment for alternative fuels at service stations and industry filling stations.

The Rockefeller bill is a proactive approach to bringing the right solution the market. Among the alternative fuels S. 2166 promotes is compressed natural gas.

New Mexico ranks fourth in our Nation's production of natural gas. Yet, this industry continues to face a surplus in capacity and depressed prices. There is simply little demand for this valuable national resource, an unfortunate market result.

Natural gas is clean, domestically abundant, and economic. The American Gas Association states that for every 1 million vehicles converted to run on natural gas, approximately 72,000 barrels of imported oil are displaced. The 3.3 million vehicles that will be converted to natural gas by the year 2000, as required by the Clean Air Act, will replace the consumption of 240,000 barrels of oil per day.

I would like to take this opportunity to discuss the feasibility of electric powered vehicles, as well. Electric vehicles, employing not only batteries, but fuel cells or small engines, could also be important transportation alternatives in some regions of the United States.

The pace of research and technology development of electric vehicles is promising. Consider that with current technology, electric vehicles have ranges of greater than 100 miles. Under a mass production scenario, it is easy to imagine that these vehicles would be capable of fulfilling the bulk of America's transportation needs, largely comprised of trips between home and the office or school. It is estimated that 85 percent of our use of gasoline is used for these local needs.

In fact, California recently passed a law requiring deployment of some ultra-low polluting vehicles to promote air quality, and other States are considering following California's lead. The energy needed to power the batteries, unlike internal combustion emissions, is controllable and containable, and in the long run it may be possible for the transportation sector to free itself from fossil fuel dependence entirely by tapping electricity and hydrogen through alternative power sources.

In conclusion, I believe that the alternative fuel and electric vehicle industries are well-positioned to make a significant and immediate contribution toward reducing our Nation's dependence on imported oil. I request that my colleagues give their greatest attention to the importance of addressing these energy matters now and also during consideration of tax legislation.

GRANTS TO PROMOTE ENERGY DEVELOPMENT ON INDIAN RESERVATIONS

Mr. DOMENICI. Mr. President, I rise to propose an amendment to S. 2166 that will accomplish two important objectives. It will promote energy development and production in this country, thereby furthering our energy security. At the same time, it will assist Indian tribes to make better use of their vast energy resources to increase Indian employment and achieve economic self-sufficiency. It does so by adding a new section 6508 to title VI which would provide tribal governments with demonstration grants and other assistance to help them develop their own energy resources and to become more involved in the other segments of the energy industry. These grants are available only for those tribes that choose to use this approach; it is not mandatory.

Indian reservations contain a significant portion of the Nation's in-ground oil, gas, coal, uranium, and other energy resources. However, these resources have been underdeveloped, thereby denying the Nation the use of these important domestic sources. Proper development of these resources will not only help the Nation's energy security, but it can make a major contribution to solving the 30 to 80 percent unemployment rates that exist on our Indian reservations and can provide the ticket to tribal economic self-sufficiency.

The key to promoting such development is to assist the tribes obtain the capability to become much more active participants in the energy development activities on their reservations. The amendment instructs the Secretary of Energy, in conjunction with the Secretary of the Interior, to work with interested tribes to help them become more active participants in the energy area. It authorizes demonstration grants that tribes can use to develop energy offices and enterprises that would take the lead in developing the reservation's energy resources. It also provides matching grants to promote the vertical integration of energy activities on reservations. For example, it could be used to assist a tribe to use its own natural gas to develop a cogeneration project on its reservation. Presently, the Indian coal, natural gas, or oil is generally moved off of the reservation as soon as it is drilled or mined. The matching grant program would encourage the use of the Indian energy resource right on the reservation—for electric generation, for refineries, and so forth, where it can create more jobs and more economic development for the tribe. Again, this is only for those tribes that choose this path.

The amendment would authorize $5 million a year for 3 years for tribal capacity building grants, and $10 million a year for 3 years for vertical integration matching grants. I urge the Senate to adopt this small but important amendment to S. 2166.

The PRESIDING OFFICER. Is there further debate on the amendments offered en bloc by the Senator from New Mexico?

If there is no further debate, without objection, the amendments en bloc offered by the Senator from New Mexico are agreed to.

The amendments (Nos. 1596 and 1597) en bloc were agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

ADDITIONAL COSPONSOR OF S. 401

Mr. DOMENICI. Mr. President, I ask unanimous consent that Senator BRADLEY be added as a cosponsor of Senate bill 401, the Americans With Disabilities Luxury Tax Relief.

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

BUSH ECONOMIC GROWTH PLAN

Mr. DOMENICI. Mr. President, I was going to rise a moment ago when the distinguished Senator from California was talking. But I understood he was speaking on a bill that he had sent to the desk. I did not want to interrupt, even for a question.

But now I rise for just a few moments to follow along the lines of the comments of the Senator from California.

I want to remind the Senate that, while we are making very good progress on this energy policy bill—and I have just indicated my congratulations to the managers and certainly to

the Senate for getting it done so quickly—I do want to remind everyone that we passed the 44th day and we are now—as Senator DOLE would say—proceeding on a fast track and we have 43 days left. This means that there are 43 days that I hope will not be spent in debating definitions and debating what should have been done a year ago.

Regardless of whether it is done by the President of the United States or the Democratic leadership here that run the Senate and the House, the truth is that the people want to know what is our best effort approach to get the growth of the American economy back on track. This is because, if it is growing, we produce jobs. If it is growing enough, we put our unemployed people to work. If it is growing as it really should, we put as many who want to work, to work in good jobs.

So again, I suggest that we ought not to busy ourselves during this 43 days with a long shopping list of what we might do to the Tax Code of the United States to make it equitable, to change it around from where it is. There is plenty of time to do that.

We ought to adopt an economic growth plan. Since the President of the United States put us on this 43-day fast track, I would like again to remind my fellow Senators that this means we ought to focus our eyes on jobs. How can we get the private sector of America growing again, so that owners and managers of businesses, large and small, employ people and give them jobs.

It is not like we ought to sit around and say let us in Government do it. We all know we can spend money. We already spend far more than we ought to. What we ought to be talking about is how do we adopt a growth plan that will do the job and not force us to tax other Americans so that we can put in place a growth package.

Everyone knows that putting taxes on any part of this economy in the midst of a recession is not the right thing. So I suggest that our No. 1 goal is jobs, not who do we tax.

I submit that for those who are interested in a real plan, the items that the President has asked us to adopt and adopt quickly—as Senator DOLE explained them yesterday—can be done in the remaining 43 days in both Houses and sent to the President.

The interesting thing that Americans should know is that the President's initiatives can be done without taxing the American people. There are some who think that, in order to help this economy, we ought to take money away from one group of Americans and give it to another. They want to cut taxes on some and raise taxes on others.

Well, as I see it, we do not have to do that if we want to adopt a growth package that includes these seven suggestions, and I believe almost everyone that has looked at the American economy wills say these seven will help. If you do them, they will push the American economy up, and at the same time as other things are already happening, such as lower interest rates, lower gasoline prices, and the other things that are going on in the economy. The initiatives will supplement these other factors and help America's private sector stabilize on the real estate front and grow so people will be put to work.

Frankly, tonight I do not choose to talk about how many jobs this will generate in America, but I submit that most people that have looked at the housing component would indicate that there would be roughly 400,000 new jobs from just the real estate portion of this. That is petty good.

Most experts say that if America's capitalist economy needs investment, which we frequently forget about here, then both the Joint Committee on Taxation and the Treasury find that over $400 billion of financial capital—that is the estimate—will be reinvested in more productive companies, in startup ventures, high technology, quality-product enterprises. I believe the bottom line is: Can we do something like this for the people of the United States, as our President has asked us to do in 43 days? I do not see any reason why we cannot. I hope we will.

I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

THE PRESIDENT'S ECONOMIC GROWTH PLAN

Mr. SARBANES. Mr. President, I am intrigued by this 43-day chart. I said yesterday that it takes a lot of chutzpah to ignore the recession for a long period of time, and then all of a sudden recognize it.

Mr. DOMENICI. Will the Senator yield for a question?

Mr. SARBANES. Just let me go on for a moment, and then I will be happy to yield to the Senator.

The Bush recession is now in day 585—585 days. The recession began in July of 1990. All of last year, the President denied there was a recession. In fact, in July, Darman said: "The recession has ended, the economy has turned up." In September 1991 Boskin said: "The recession ended in the spring. A recovery has begun."

In November 1991, President Bush said—and this is some 450 days after the recession began: "It is not a recession." On November 24, President Bush said "I do not believe this country is in a recession." Mr. President, the Bush recession has now gone on for 585 days.

Let me show you some other figures: 533 days passed before President Bush acknowledged that we were in a recession. Once he acknowledged it, he went to the other extreme and said the economy was in absolute free fall, which of course helped to contribute to a further downturn in consumer confidence.

We went 502 days before the President was willing to provide extended unemployment benefits. As the President waited, people lost their cars, their apartments, and their homes.

We said to the President: This is an emergency. This is an emergency that warrants going outside of the budget agreement in order to provide help to Americans, just as you came to the Congress and asked the Congress to go outside the budget agreement in order to send help overseas.

The Congress agreed to that. I agreed to that. I supported it.

I thought the President was right when he made his appeal for an emergency declaration in order to provide assistance overseas. But then the President turned around and could not perceive the emergency here at home.

The extension of unemployment benefits was in November. We had been in the recession for 502 days when the President finally agreed to the extension of unemployment benefits.

The President said, "I do not have an economic plan now, but I am going to have one when I give the State of the Union Message." That was 74 days later.

We have been in this recession for 576 days before the President announced an economic plan.

There are many who think the economic plan he has announced is inadequate to the problem we confront. We heard testimony just this morning from the chairman of the President's Council of Economic Advisers. The administration is projecting growth for this year of 2.2 percent. That is the lowest growth coming out of a recession that we have experienced in any of the eight recessions in the postwar period.

So the administration by its own projections expects a weak and anemic recovery and, therefore, an economy that still confronts the range of problems which we see now. In addition, there are many people who disagree with their forecast, thinking that they might be too optimistic.

In any event, if you take their forecast, unemployment in 1992 will average 6.9 percent. It was at 7.1 percent last month. We asked the administration, how much does the economic proposal which the President laid out in the State of the Union Message contribute to economic growth?

I want the Members to listen to this very carefully, because the President said at the outset of his State of the Union that he was going to talk about big things, and then all we got were small potatoes.

The administration itself is projecting growth of 2.2 percent for this year. Without their economic plan, they project growth of 1.6 percent.

So their economic plan would add six-tenths of 1 percent to growth even

if you accept every one of their premises. And, of course, there are many who have questioned them. But even if you accepted every one of them, their own plan is worth six-tenths of 1 percent in economic growth by their own admission. According to the administration, unemployment will average 6.9 percent for 1992. That amount is almost 9 million unemployed Americans.

In addition to the 9 million unemployed Americans, you have another 1.1 million who are in the work force and have dropped out of it because they cannot find work, and you have another 6.3 million Americans who are working part time but want to work full time. They want and need full-time jobs, but they can only find part-time work. When you add that all up, you get 16 million Americans.

The Department of Labor computes a comprehensive unemployment figure which includes discouraged working and workers who are working part time but want to work full time. This comprehensive rate unemployment figure of 10.4 percent shows double figures for unemployment.

Mr. President, we have been in the Bush recession, for 585 days and 533 days passed before the President would acknowledge a recession.

Finally, in December, for 2 months ago and almost 18 months into the recession, the President said "you might argue, technically, are we in a recession or not?" But when there is this sort of sluggishness and concern, definitions, heck with it. Let us get on with the business at hand.

On that same day, Marlin Fitzwater explained—and I quote him: "Certainly, from any practical standpoint, the recession does continue."

That is 533 days.

And now we are getting these charts that say "You must act on our economic program within 43 days."

There were 502 days before the President agreed to extend unemployment benefits. The recession began in July, 1990. In August, 1991, 13 months after the recession began, the President rejected a congressional effort to provide extended unemployment benefits. He rejected it again in October.

Finally toward the end of November, 502 days after the recession began, the President finally agreed to congressional efforts to extend unemployment benefits.

Then all last fall, people kept saying to the President there is a problem here. The President kept saying "no problem." They kept saying, "No, no, Mr. President, there is a problem here. Look at the unemployment rate. Look at these economic indicators, showing a downturn. Look at all the people that have lost their jobs and who are suffering across the country. We have to do something about this economic situation."

The President said, "No; we are going to wait. I am going to announce a program." In the State of the Union Address, which took place on January 28 of this year, not even 2 weeks ago, the President announced an economic plan. This was 576 days after the recession began.

If there were not human tragedy connected with it, there would be a certain humor to it. But, there is human tragedy connected with it, and that is the sad part of the story—576 days after the recession began, President Bush announces an economic plan which even by the administration's own forecast is going to be inadequate to the task. It is going to add six-tenths of 1 percent to the growth of the economy, and we are still going to have an unemployment rate average for 1992 of 6.9 percent.

Now, the Senator asked me to yield to him for a question earlier and I would be happy to do so at this time.

Mr. DOMENICI. No. The Senator has cleared it all up. I will speak shortly. I thank the Senator very much.

Mr. SARBANES. The Senator has no questions?

Mr. DOMENICI. I have no questions.

Mr. SARBANES. Fine. Very good.

Mr. President, I just want to underscore these time intervals. The Nation was in a recession beginning in July 1990. The President has ignored that recession for 533 days. He did not give an economic plan until 576 days. In fact, beginning back in the fall of last year, his advisers began to say, "We have got a problem here," but they would not really recognize it, they would not try to address it. So it ought to be very clearly understood where the time has gone.

Obviously we need to address the Nation's economic situation. We require a program that builds the strength of the American economy. We require a program to invest in the future of our Nation. Our infrastructure is deteriorating.

The chairman of the Senate Appropriations Committee, the distinguished President pro tempore of the Senate, gave very powerful testimony yesterday before the Senate Budget Committee, of which the able Senator from New Mexico is the ranking member, and I assume he was there for that occasion. I want to quote in part what Senator BYRD had to say, and I am now quoting him.

> We seem to be the only major industrialized nation in the world that does not understand the connection between public investment and productivity growth. Our competitors certainly understand it. Because while we have been ignoring our public investment needs in this country, our competitors have been investing and, as a result, they have been enjoying higher rates of productivity growth.

Senator BYRD then went on to talk about the necessity to undertake major investments in our own infrastructure.

If we do not address infrastructure and worker training and education and research and development, we are not going to be in a position to compete internationally with these other countries that are doing exactly that. They are making those investments. We need to recognize that and do that here at home. With the collapse of the Soviet Union, there is an opportunity now to move to an entirely different level in terms of making our economy work. That is the challenge that is before us.

Mr. President, I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I understand the Senator from Louisiana wants to proceed, and I will try to be brief. Let me just respond with three comments. First, I was present yesterday when the distinguished chairman of the Appropriations Committee, my friend Senator BYRD, suggested his version of how we might make America grow, prosper, and become more productive. And I will tell the Senate, as graciously as I can, what I told my friend, the chairman of the Appropriations Committee.

I said to him:

> Mr. Chairman, if you are suggesting that the United States of America can become more productive than it is today—can grow as Japan is growing, put all her workers to work—by spending more money out of the appropriated accounts of our Government, then I would beat you to the floor. If you would offer a 20-percent increase, I would say make it 50 percent, because if we make it grow 50 percent more we will be more productive and more people will go to work. But you see, Mr. Chairman, it may not be that Government spending is the only factor in growth, in jobs and productivity.

I don't think the American people believe that if Government spent twice as much we would be twice as productive and generate twice as many jobs across the private sector of America. It won't happen.

Tomorrow, if I am here, I will come to the floor and I will borrow the chart that says 494 days. I will make it 493. But I will put under it "Democratically led Congress has done nothing about the recession, for 493 days."

Mr. President, I think it is time that we share with the American people what some would not like them to know, that those who are yelling the loudest at the President for not doing this or that, by their very numbers, control the U.S. House. Not by 10 votes, not by 30 votes, not by 80 votes, but by 102 votes. If they have a game plan for America's recovery, all they had to do was pass it, I say to my friend, Senator GRASSLEY, with 102 votes to spare.

Where is the plan? How come they are saying the President did not do anything about it? Where were all of them? Tomorrow, we will just say, "Where were they?"

How, having said that, I believe it is unfair to continue to say that the

President was not for an unemployment compensation bill extension. My good friend from Iowa knows that the President was not for a new unemployment compensation bill that was not paid for. Indeed he signed it immediately after both sides, including the majority side, agreed to pay for it. In fact, the very day we passed it, we paid for it, so that it did not add to the deficit. The overwhelming number of Americans feel the deficit is the real problem. The President did not get a chance to do that earlier because there were some who wanted him to kowtow and say "Uncle." "You run the show." That is what they wanted him to say. And he said, "You pay for it and I will sign it." Simple as that.

Last but not least, I have a suspicion as to why we have not seen any plan from the other side for 494 days. Because today I read in the newspaper that the centerpiece of their plan—at least coming out of the alleged spokesman from the House—is a very simple one. It reminds me of Marie Antoinette, except it is candy today.

What does a $200 reduction in the middle-income taxes of Americans mean? That is $200 a year per taxpayer. Well, I figured it out. I know what it says, Senator GRASSLEY, that each taxpayer get 54 cents a day.

So I went to the candy store and I found that a package of two Reese's peanut-butter cups cost 54 cents. Could that really be what they are saying is the centerpiece of a recovery plan? Well, no, not quite. Because if it is a family, they get two candy bars, $1.08 a day.

Frankly, if I had a plan like that, I would wait 494 days, too. I think my friend from Iowa would also, because the plan is not cheap at that. The centerpiece was to do this for 2 years. We already have a huge deficit, Mr. President. But this plan that gives taxpayers 54 cents a day will add $46 billion to the deficit of the United States; $23 billion a year.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I enjoyed that candy example presented by the Senator from New Mexico. It shows that if we pay for the tax cut for middle-income Americans by putting a tax burden on the very wealthy, they will not be significantly hurt. The wealthy have reaped the benefits of what has taken place in our economy over the last decade. There has been an incredible concentration of income and wealth at the upper end of the scale. The Federal Reserve Board just completed a study on that issue, and I hope in the future to develop that a bit.

What the Senator is saying is that the extra burden on the rich might not end up depriving them of all that much. And therefore, I assume they would be willing to undertake that burden in order to get some improved equity and income and give the middle-income people of this country, who have been overburdened in order to give the wealthy a major tax break, an opportunity to even out these burdens.

What we are getting is just a succession of trickle-down economics. The notion that if you just put all wealth and income into the upper 5 to 10 percent of the income scale, you are gong to produce prosperity for the great mass of the people, has never worked in this country.

The strength of this economy over the years has come from developing prosperity in the great base. It is percolate-up economics, not trickle-down economics. Yet, what we are getting now from the President and our Republican colleagues is trickle-down economics.

The Senator from New Mexico made a great deal about who has a majority. It was similar to an elementary civics lesson. What he failed to include in that little lesson was the power of the veto. Last fall, we tried to extend the unemployment insurance benefits. We sent the President a bill; the President vetoed that bill. Under the Constitution, in order to override a veto, you need at two-thirds vote in both Houses of Congress.

We made the effort there in the Senate to override the President's veto. The vote was 65 to 35. Every one of the 57 Democratic Members of the Senate voted to override the President's veto. To their credit, eight Members of the President's party also voted to override the veto; 65 Members of the Senate voted to override; 35 voted to sustain the President's position.

So you really had a very clear majority of the Senate in favor of the legislation. The President put the veto stamp on it, and the Senate was unable to override his veto, even though 65 Members voted in order to do so.

That demonstrates the power of the veto, which President Bush has been prepared to use in order to negate important advances in policy, some of which would address these pressing economic problems.

In many respects, the President has been ruling by veto, vetoing important pieces of legislation for the health and benefit of the American people by the use of the Presidential veto. He has been able to sustain his veto because he can keep one-third of one or the other of the two Houses in order to back him on his veto.

We will see in the weeks to come whether the President continues to use his veto weapon. But it ought to be very clear to the American people that the impediment that stands in the way of achieving important economic and social policy to help American families, to address our economic situation, to make lives better for our children, is the Presidential veto which President Bush has been prepared to use over and over again. Unfortunately, he can find sufficient support amongst the Republican Members of either the Senate or the House to sustain the veto.

On the unemployment insurance bill, we had a 30-vote margin for the legislation, but not enough to override the veto. I think that the American people will increasingly come to understand that the use of the veto has now become a major impediment to the achieving of progressive economic and social policy.

Mr. President, I yield the floor.

NATIONAL ENERGY SECURITY ACT

The Senate continued with the consideration of the bill.

VITIATION OF ACTION ON AMENDMENT NO. 1590

Mr. JOHNSTON. Mr. President, earlier this evening, an amendment was inadvertently sent to the desk and adopted. It was by Senator RIEGLE. I ask unanimous consent that the adoption of amendment No. 1590 be vitiated.

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

Mr. JOHNSTON. Mr. President, have we hotlined the unanimous-consent request? Are we ready to make that?

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

Mr. JOHNSTON. Certainly.

Mr. MITCHELL. Mr. President, I am advised on the Democratic side we are in the process of sending out a hotline to Senators advising that shortly the managers will seek to gain an agreement limiting the amendments remaining to the bill. It is not much of a limit; it is a very long list of amendments. But at least it will be a finite list, and we hope that if any Senator does have an interest, that Senator should be present to express his interest or her interest.

I assume similar either is being done or has been done on the Republican side.

Mr. WALLOP. If the majority leader will yield, it would expedite ours if we could have the majority's list. I passed our list over to you, but we need it in case some few ask us.

Mr. MITCHELL. I believe this document is a compilation of both.

Mr. WALLOP. Our problem is we do not have either the "pilation" or the "comp." I do not know which.

Mr. MITCHELL. I yield.

Mr. JOHNSTON. Mr. President, while we are waiting for that list and ready for the hotline, Mr. President, I will shortly send to the desk seven amendments as follows: One by Senator DECONCINI to require the Secretary of Energy to establish programs for research and development of the potential of Indian reservations for long-term solar and other alternate energy and related technology research; by Senator GORE, to study the feasibility of developing high-efficiency appli-

ances; by Senator GORE, to establish Federal energy analysis and diagnostic centers; by Senator GORE, to authorize grants to States to promote utility industrial energy efficiency programs; by Senator WIRTH, to strengthen energy efficiency standards for commercial heating and air-conditioning equipment; by Senator DECONCINI, to encourage the transfer of renewable energy technology to end users; by Senator BURNS, to facilitate the use of renewable technologies to reduce energy consumption in buildings.

AMENDMENTS NOS. 1598 THROUGH 1604

Mr. JOHNSTON. Mr. President, I send these amendments to the desk and ask unanimous consent they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes amendments numbered 1598 through 1604 en bloc.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments considered en bloc are as follows:

AMENDMENT NO. 1598

(Purpose: To require the Secretary of Energy to establish a program to research and develop the potential of Indian Reservations for long-term solar and other alternative energy and related technology research)

On page 175, line 8, after "projects" insert "to include research and research facilities".

On page 176, line 6, delete "The".

On page 176, line 6, after "COST SHARE.—" insert "With the exception of grants awarded for the purpose of feasibility studies and research programs, the,".

On page 176, line 14, preceding "the insert "(1)".

On page 176, line 15, after "government." insert "(2) the term "private sector person" shall include a consortium of Universities coordinated through Northern Arizona University.".

On page 176, line 16, add new subsection (f) as follows:

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary for the development and implementation phase of the program established by this section.".

Mr. DECONCINI. Mr. President, the amendment I am offering will build upon the provision already contained in the committee bill which establishes a Tribal Government Energy Assistance Program by expanding its scope to include programs for renewable energy research specially directed at Native Americans.

In the years I have been in the Senate, I have many times expressed the need to reduce our dependency on foreign oil. I have personally authored and introduced a number of measures for solar energy programs and have worked to increase funding for alternative energy initiatives.

But unfortunately, we have gone backward in developing energy independence. The previous administration drastically slashed research and development programs for solar energy and conservation. Frankly, Mr. President, we as a Nation have not made the commitment to alternative energy technologies.

However, in the bill we are considering today, S. 2166, we are taking significant steps to correct this inadequacy. I applaud the efforts of the chairman and ranking member for their efforts in this regard. I am particularly pleased with the Tribal Government Energy Assistance Program.

As a member of the Indian Affairs Committee, tribal leaders have made it clear to me that much of the intellectual and human potential on our Indian reservations has been overlooked. There are few opportunities for college educated tribal members to return to home. My amendment, at least in some small measure, creates these opportunities by establishing a renewable energy research and development program for native Americans.

Mr. President, in addition to the intellectual capabilities, Indian reservations also possess significant natural resources suitable for alternative energy resources. If we were to look for the optimum locations for solar, wind, or any other alternative energy research, we could not find a more ideal place than many of this Nation's Indian reservations. Also, the rural setting of these areas makes them particularly well suited for the utilization of renewable technology. For example, on the Navajo Reservation in Arizona and New Mexico, there are only five people per square mile. Consequently, the costs of building conventional electrical facilities is much greater than in other areas of the country. Widespread use of solar technology has the potential of lower utility costs for these individuals who are already of generally modest financial means.

In my opinion, in order for our energy policy to be truly comprehensive, it must take into consideration the potential of our native American communities to develop effective research programs in renewable energy.

Mr. President, this is exactly what my amendment does. It expands the provision contained in the bill pertaining to the Tribal Government Energy Assistance Program to not only include renewable energy projects, but authorizes the Secretary to financially support and encourage tribal research and development in this field.

The amendment also authorizes the Secretary of Energy to support a consortium of western universities headed by Northern Arizona University. This consortium will develop and implement a tribal renewable energy research and development program in conjunction with tribal leaders. NAU has a demonstrated leadership and expertise in Indian higher education. NAU has more Native American students and graduates than any other university in the country. Also, they have extensive experience in developing cooperative alternative energy efforts on reservations. NAU has been involved in bringing solar energy technology to the Navajo reservation by undertaking a project to equip homes with photovoltaic panels for electrical generation. Also, they are undertaking research on the design of an electronic controller to optimize the charging cycle of lead acid batteries using photovoltaic cells.

Mr. President, my amendment will work to both put a stop to the brain drain occuring on our reservations while working to furthering the development of renewable energy resources. I ask that my colleagues join me in supporting it.

AMENDMENT NO. 1599

(Purpose: To study the feasibility of developing high efficiency appliances.)

On page 144, after line 17, insert the following new section:

SEC. 6112. REPORT ON THE POTENTIAL OF COOPERATIVE ADVANCED APPLIANCE DEVELOPMENT.

(1) Within 12 months after the date of enactment of this Act, the Secretary of Energy shall, in consultation with utilities and appliance manufacturers, prepare, and submit to Congress, a report on the potential for the development and commercialization of appliances which are substantially more efficient than required by Federal or State law.

(2) Such report shall identify candidate high-efficiency appliances which meet the following criteria:

(A) that, the potential exists for substantial improvement in the appliance's energy efficiency, beyond the minimum established in Federal and State law;

(B) That there is the potential for significant energy savings at the national or regional level;

(C) that, such appliances are likely to be cost-effective for consumers;

(D) that, electric, water, or gas utilities are prepared to support and promote the commercialization of such appliances; and

(E) that, manufacturers are unlikely to undertake development and commercialization of such appliances on their own, or development and production would be substantially accelerated by support to manufacturers.

(3) The plan shall also:

(A) describe the general actions the Secretary of Energy could take to coordinate and assist utilities and appliance manufacturers in developing and commercializing highly efficient appliances;

(B) describe specific proposals for Department of Energy assistance to utilities and appliance manufacturers to promote the development and commercialization of highly efficient appliances;

(C) identify methods by which Federal purchase of highly efficient appliances could assist in the development and commercialization of such appliances; and

(D) identify the funding levels needed to develop and implement a Federal Program to assist in the development and commercialization of highly efficient appliances.

AMENDMENT NO. 1600

At the end of title VI, subtitle B, add the following new section:

SEC. ENERGY ANALYSIS AND DIAGNOSTIC CENTERS PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish within the Department of Energy an Energy Analysis and Diagnostic Centers program designed to assist qualifying commercial and industrial facilities to conserve energy and reduce operating costs by applying efficient technologies to their operations and buildings and to provide opportunities for students to gain experience in the field of energy management.

(b) QUALIFYING COMMERCIAL AND INDUSTRIAL FACILITIES.—For purposes of this section, qualifying commercial and industrial facilities are those facilities that meet at least three of the following four criteria:

(1) 500 or fewer employees;

(2) gross sales of not more than $75 million per year;

(3) total energy costs of not more than $1.75 million per year;

(4) an absence of in-house energy expertise.

(c) ADMINISTRATION.—(1) Not later than 6 months after the date of enactment of this section, the Secretary shall seek to enter into a management agreement with an appropriate institution to administer the program.

(2) For purposes of this section, an appropriate institution is a nonprofit institution with demonstrable expertise in engineering, physical science, communications, business and such other disciplines as appropriate and with expertise in industrial manufacturing including new process and product research and development.

(d) SOLICITATIONS FOR PROJECT PROPOSALS.—(1) Within 9 months after the date of enactment of this section, the administering institution shall, under the direction of the Secretary and through a competitive bidding process select not less than 25 sites to be designated Energy Analysis and Diagnostic Centers. The sites shall be educational institutions such as universities, engineering and technical schools and other institutions of higher learning with demonstrable capability to

(A) perform energy audits for qualifying industrial facilities designed to assist such facilities to reduce their energy consumption and improve the efficiency of their energy usage;

(B) provide detailed reports to the qualifying industrial facility identifying energy conservation and efficiency opportunities;

(C) provide such other service as the Secretary deems appropriate.

(e) DISSEMINATION OF INFORMATION.—Not less than every 12 months, the Administering institutions shall synthesize from the reports of the Energy Analysis and Diagnostic Centers and make publicly available information concerning significant energy conservation opportunities provided, however, that all proprietary information shall be kept confidential.".

AMENDMENT NO. 1601

Add to the end of title VI, the following new section:

SEC. 6506. GRANTS TO STATES TO PROMOTE UTILITY INDUSTRIAL EFFICIENCY PROGRAMS.

(a) DEFINITIONS THE PURPOSE OF THIS SECTION.—

(1) the term "covered industry" means the food and food products industry, lumber and wood products industry, petroleum and coal products industry, and all other manufacturing specified in Standard Industrial Classification Codes 20 through 39 (or successor classification codes);

(2) the term "industrial audit" means—

(A) identification of opportunities in the production process (from the introduction of materials to final packaging of the product for shipping for—

(i) improving energy efficiency

(ii) reducing environmental waste; and

(iii)technological improvements designed to increase competitiveness and achieve cost-effective product quality enhancement;

(B) identification of opportunities for improving the energy efficiency of lighting, heating, ventilation, air conditioning, building enevlope systems operating outside of the production process; and

(C) the identification of opportunities for using renewable energy technology both in the production process and in the systems described in subparagraph (B);

(3) the term "Secretary" means the Secretary of Energy; and

(4) the term "Utility" means any person, State agency (including any municipality), or Federal agency, which sells electric or gas energy.

(b) GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary may make grants to States which pursuant to State law,

(A) require utilities to provide financial and technical assistance to covered industries; and

(B) offer incentives to utilities for providing such assistance.

(2) ELIGIBLITY CRITERIA.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall establish eligibility criteria for grants awarded under subsection (a). Such criteria shall require a State applying for a grant to demonstrate that such state, by State legislation or regulation—

(A) requires utilities to provide to covered industries served—

(i) industrial energy audits; and

(ii) financial incentives for implementing energy efficiency improvements; and

(B) allows utilities providing such assistance to—

(i) recover the costs of providing industrial audits; and

(ii) receive a reasonable rate of return on financial incentives provided.

(3) USE OF FUNDS.—Grants made pursuant to this section shall be used by a State to—

(A) to make available to cover all industries, through appropriate institutions such as Universities, nonprofit organizations, State and local government entities, and technical centers, information energy efficient technologies;

(B) establish programs to train individuals in industrial energy audits; an

(C) assist utilities in developing, testing and evaluating energy efficiency programs and technologies for industrial customers.

(4) ALLOCATION OF FUNDS.—Grants made pursant to this section shall be allocated each fiscal year among States meeting the criteria of subsection (b) who have submitted applications 60 days before the first day of such fiscal year. Such allocation shall be made in accordance with a formula to be prescribed by the Secretary based on each such State's share of value added in industry (as determined by the Census of Manufactures) as a percentage of the value added by all such States.

(5) COORDINATION WITH ENERGY ANALYSIS AND DIAGNOSTIC CENTERS.—In carrying out the functions describe in subsection (c), States shall, to the extent practicable, coordinate such functions with activities and programs conducted by the Energy Analysis and Design Centers of the Department of Energy.

(c) OTHER FEDERAL ASSITANCE.—

(1) DIRECTORY.—The Secretary shall establish a nationwide directory of organizaitons experienced in emerging energy efficiency and waste reduction technologies. Such directory shall be made available to interested parties.

(d) REPORTS.—

(1) ANNUAL REPORT.—Not later than one year after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to the Congress a report which—

(A) identifies barriers encountered in the implementing the Act;

(B) makes recommendations for overcoming such barriers; and

(C) documents the results achieved as a result of the programs established and grants awarded pursuant to this Act.

(2) OTHER REPORT.—Not later than two years after the date of the enactment of this Act, the Secretary shall submit to the Congress a report which—reviews any difficulties encountered by industry in implementing energy efficiency improvements recommended as a result of programs established pursuant to this Act;

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purpose of this section.

Mr. JEFFORDS. Mr. President, I am delighted to cosponsor—with my colleague from Tennessee, Senator GORE—an amendment we call the Industrial Energy Efficiency and Competitiveness Act. Our amendment will provide States with incentives to require or encourage their utilities to provide local manufacturers with demand-side management [DSM] technology assistance.

Not too long ago, many people claimed we could move from a manufacturing-based economy to a service-based economy. Fortunately, that notion appears to be out of fashion. The current recession has made us all aware how important it is for this country to manufacture goods. Manufacturing generates nearly one-quarter of U.S. gross national product [GNP]—some $300 billion annually—and employs 20 million Americans.

United States manufacturers are having trouble competing in domestic and global markets, though. President Bush's recent trip to Japan underscored this. Some people argue that we should let domestic manufacturers fend for themselves. I reject that notion. There are ways for the Federal Government to help industry without undermining the free enterprise system. Our amendment is one such way.

Industry uses 40 percent of U.S. electricity production, 43 percent of natural gas, and 25 percent of petroleum. There is enormous potential for energy efficiency improvements through DSM Programs. Utilities are the logical entities for providing DSM expertise and assistance, particularly to small- and medium-sized manufacturers that lack the capital to acquire such expertise. Smaller firms comprise 98 percent of our Nation's 358,000 manufacturers.

The premise of our amendment is simple: utilities cannot relocate. They have a vested interest in the economic well-being of their service territories. They stand to benefit from helping industrial customers become more energy efficient. Why? Well, a manufacturer that reduces input costs such as energy for each unit of output—or expands output without a commensurate increase in inputs—becomes more competitive, more prosperous.

One might wonder why utilities aren't doing this already. Some are, but too few * * * for the following reasons. First, utility DSM Programs tend to focus on so-called "building envelope" improvements: lighting, heating, ventilation, air conditioning, and the like. Industry has made progress here; there's more to be made. We're on the track.

But utility DSM Programs also need to focus on the manufacturing processes themselves, and on waste reduction. Just a handful of utilities do this, in large part because of a terrible shortage of qualified engineers. There are very few engineers capable of going through an aluminum extrusion or metal-working plant and identifying ways to change the manufacturing process itself to save energy and reduce waste of any media.

Another obstacle to DSM Programs is cost. Utilities have a difficult time recovering the cost of energy audits, or receiving a reasonable rate of return on energy efficiency investments.

Consequently, utility DSM Programs for industrial customers have lagged far behind those created for residential and commercial customers.

Our amendment would provide States with grants if they require or encourage their utilities to establish industry-oriented DSM Programs. Grant money would be awarded to State energy offices to train industrial process assessors, or to establish programs that increase the availability and implementation of energy efficient technologies. To qualify for the grants, States would have to allow utilities to recover the cost of energy audits, and to receive a reasonable rate of return if they finance energy efficiency investments through grants, loans, or interest buy-downs.

Mr. President, I would point out that the Federal Government has initiated DSM Programs through National Centers for Manufacturing Sciences and Energy Analysis and Diagnostic Centers [EADC]. We've spent some $15 million on EADC's, which have performed about 3,600 energy audits since 1976. That investment has generated over $455 million in energy savings.

The technology centers and EADC's are doing wonderful work, but they are limited in their reach. There are 12 EADC's nationwide, and each center performs about 30 assessments per year. At that rate, it would take 1,000 years for the EADC's to perform an audit for every manufacturer.

Utilities alone have the resources and the relationship with business customers in their service territories to provide manufacturers in each and every community across the country with energy efficiency audits and technological assistance.

Our amendment is designed to complement the efforts of existing manufacturing technology centers and EADC's. We have met with DOE and the National Institute for Standards and Technology [NIST] to preclude either unnecessary duplication or destructive competition.

Mr. President, I would like to take just a few minutes to tell the Senate about the origin of this amendment. It started as an idea of Diane De Vaul's. Ms. De Vaul is the director of policy at the Northeast-Midwest Institute. As many of my colleagues may know, I am the cochairman of the Northeast-Midwest Senate coalition. The coalition has worked closely with Ms. De Vaul and other institute staff to develop this amendment. They are to be congratulated for their dedication to promoting the health of domestic manufacturing, and for their tenacity in promoting this idea.

Nearly 5 years ago, institute staff received grant money to work with two utilities in establishing the sort of DSM Program I have just described. The first pilot project involved the Osage Municipal Utility in Osage, IA. The second involved the Somerset Rural Electric Cooperative near Pittsburgh.

Let me tell you what happened once the programs got off the ground.

In Osage, a knitting mill operator was being courted by officials from two other States to move his operation. He wanted to stay, but knew he had to do something to increase his productivity. The utility approached the firm, offered a process assessment of the firm's energy use, and a productivity evaluation. The mill owner decided to stay in Osage and undertake a $2 million plant renovation and production-line reorganization. He was able to borrow the money at below-market interest rates because of a buy-down the utility financed.

The investment lowered the cost of producing a dozen socks by 37 percent, from 48 cents to 30 cents. The plant increased its overall energy use by 60 percent the first year because plant productivity increased by 200 percent. The owner was able to reduce wholesale prices while increasing sales and profits. Not only did he stay in Osage, he expanded the plant, adding 50 new jobs, a major boost for a town of fewer than 4,000 people. It has been a significant achievement for the dying domestic textile industry.

In just 6 years, 1983 to 1988, the Somerset Rural Electric Cooperative lost 48 percent of its industrial load. Not surprisingly, the cooperative was eager to work with the Northeast-Midwest Institute to encourage local economic development through energy efficiency investments. A lumber company was the first to take advantage of the free energy audits and the interest rate buy-downs on efficiency improvement loans offered by the utility.

Based on the assessment, the company replaced its chippers and debarker. The new equipment saved $4,250 per year in energy costs, lowered maintenance expenses, and produced higher quality products. In mid-1990, the company borrowed $2.9 million to modernize and expand. The effort included constructing a new lumber mill, renovating the old mill, and installing more than $800,000 in new equipment, including a high-technology, energy-efficient drying kiln.

As a result of this investment, the company is diversifying into hardwood veneer production; previously, it was only a rough-cut, and low value-added operation. The veneer production industry is less than a decade old in this country, but demand for quality veneers is growing steadily. Already, the company has identified markets worldwide for its new products.

Because the pilot projects were so successful, the Institute then received grants to work with three States to replicate them on a statewide basis. Last year, Ohio Gov. George Voinovich, Iowa Gov. Terry Branstad, and Pennsylvania Lt. Gov. Mark Singel announced their States' desire to work with the Institute. I have copies of the announcements and ask unanimous consent that they be included in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. JEFFORDS. Now, I understand Institute staff have also visited with State, utility, and public service commission officials in Maryland, Michigan, and Wisconsin. Clearly, the idea is catching on. I'm going to promote it in my State of Vermont. Our amendment certainly will promote it.

Building on these successes, Institute staffers have worked with State energy office officials, congressional staff, utility heads, and other interested parties over the past several months to fashion the amendment we are now considering. I'm pleased to say that my fellow cochairmen of the Northeast-Midwest Congressional Coalition—HOWARD WOLPE and DEAN GALLO—and coalition members EDWARD MARKEY and MATTHEW RINALDO introduced a bill containing the language of this amendment on Wednesday.

I urge my colleagues to support this amendment. If adopted, it will help every utility—every manufacturer—across the country. It will help to make us competitive again.

EXHIBIT 1

COMMONWEALTH OF PENNSYLVANIA,
Harrisburg, PA, June 18, 1991.

DIANE DE VAUL,
Director of Policy, Northeast-Midwest Institute, Washington, DC.

DEAR MS. DE VAUL: I am writing to express my support and commitment on behalf of the Commonwealth of Pennsylvania to participate as one of the two pilot states for the Northeast-Midwest Institute's model, statewide, industrial energy-efficiency project. The project provides the opportunity for the Commonwealth to build on its existing economic development and energy-efficiency initiatives. By working with our utilities to tailor their demand-side management initiatives in the industrial sector process-technology improvements, we can achieve two goals simultaneously-enhanced energy efficiency and stronger, more competitive industry.

As you are aware, the state has recently required utilities to submit plans to expand their demand-side management programs. Initial discussions with investor-owned utilities indicate strong interest in pursuing a process-oriented industrial program.

Pennsylvania offers a number of advantages as a pilot state. The Ben Franklin Partnership with its Advanced Technology Centers, the Industrial Resources Center network, PENNTAP, and our network of regional Pennsylvania Energy Centers are outstanding examples of the economic development initiatives that could provide resources for the program. The Pennsylvania Energy Office has built a reputation for innovation and effectiveness. The demand-side management process recently begun by the Pennsylvania Public Utility Commission offers to be another potential resource for this project.

Please do not hesitate to let me know if there is anything I can do to further the progress of your important project. I have asked Jan Freeman, the Executive Director of the Energy Office, to serve as your point of contact for Pennsylvania's involvement.

MARK S. SINGEL,
Lieutenant Governor, Chairman, Pennsylvania Energy Office.

OFFICE OF THE GOVERNOR,
Des Moines, IA, March 25, 1991.

MS. DIANE DE VAUL,
Director of Policy, The Center for Regional Policy, Northeast-Midwest Institute, Washington, DC.

DEAR MS. DE VAUL: I am writing you to confirm Allan Thoms' expression of Iowa's interest in participating as one of the pilot states for the Northeast-Midwest Institute's model statewide industrial energy efficiency project. Economic development and energy efficiency are two of Iowa's critical policy issues for the 1990's. Your proposal offers us a way to address both.

Iowa should offer an interesting case study for you in that it is a rural state with numerous small to medium-sized manufacturing firms. We import over 97 percent of our energy resources. Measures that will help make Iowa a more efficient user of energy or replace imported sources with domestic ones could have a substantial beneficial impact on the state's economy. Process energy efficiency improvements also represent a way of helping our existing industries to become more competitive in the global marketplace.

Our state has other advantages as a choice for your project. We have a strong Department of Economic Development, a forward-looking State Energy Office and an innovative Utilities Board. Iowa also has significant industry modernization programs, including CIRAS at Iowa State University.

Please do not hesitate to let me know if there is anything I can do to further the progress of your important project. I have asked the Director of the Department of Economic Development, Allan Thoms, to serve as your point of contact for Iowa's involvement in this project.

Sincerely,

GOVERNOR TERRY BRANSTAD.

STATE OF OHIO,
OFFICE OF THE GOVERNOR,
Columbus, OH, January 6, 1991.

MS. DIANE DE VAUL,
Director of Policy, Northeast-Midwest Institute, Washington, DC.

DEAR MS. DE VAUL: I am writing to confirm my interest in having Ohio participate as one of the pilot states for the Northeast-Midwest Institute's model statewide industrial energy efficiency project. Ohio is moving forward with the development of a comprehensive energy plan and I believe that your proposal of a new partnership to further energy efficiency and economic development in the industrial sector in Ohio comes at an optimum time.

As you are aware, we are concerned about the impact of the Clean Air Amendments on utility rates here and are looking for innovative and effective ways to mitigate any impact they might have on our industrial base. Process energy efficiency improvements could represent a way of helping our existing industries become more competitive in domestic and international markets.

Ohio offers several advantages as a pilot state. We have a forward-looking utilities board, a strong commitment to leadership in energy policy, and a number of effective economic development programs in place which could support Ohio's involvement in this project.

Please do not hesitate to let me know if there is anything I can do to further the progress of this project. I have asked the Chairman of the Public Utilities Commission of Ohio, Craig Glazer, to serve as your point of contact for Ohio's involvement in this project.

Sincerely,

GEORGE V. VOINOVICH,
Governor.

AMENDMENT NO. 1602

(Purpose: To strengthen the energy efficiency standards for commercial heating and air-conditioning equipment)

Page 127, line 18, insert "(a)" before "title III".

Page 128, lines 1–2, after "air-cooled" add ", water cooled, evaporatively cooled, or water-source (not including ground water source)".

Page 128, lines 8–9, after "air-cooled" add ", water-cooled, evaporatively cooled, or water-source (not including ground water source)".

Page 128, line 20, after line 20 add the following:

(5) the term "packaged terminal air conditioner" means a wall sleeve and a separate unencased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability energy;

(6) the term "packaged terminal heat pump" means a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source and should have supplementary heating availability by builder's choice of energy;

(7) the term "warm air furnace" means a self-contained oil- or gas-fired furnace designed to supply heated air through ducts to spaces that require it. For purposes of this section, the term warm air furnace includes combination warm air furnace/electric air-conditioning units but excludes unit heaters, duct furnaces and units covered by Section 321(a) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a));

(8) the term "packaged boiler" means a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections. For purposes of this section, the term packaged boiler excludes units covered by section 321(a) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a));

(9) the term "storage water heater" means a water heater that heats and stores water within the appliance at a thermostatically controlled temperature for delivery on demand. For purposes of this section, the term storage water heater excludes (a) units with an input rating of 4000 Btu per hour or more per gallon of stored water; and (b) units covered by Section 321(a) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a));

(10) The term "instantaneous water heater" means a water heater that has an input rating of at least 4000 Btu per hour per gallon of stored water. For purposes of this section, the term instantaneous water heater excludes units covered by Section 321(a) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a)); and

(11) The term "unfired hot water storage tank" means a tank used to store water that is heated externally.

Page 128, line 24 through page 129, line 1. Strike the following: "lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment;".

Page 129 lines 18–20. Strike lines 18–20 and substitute the following therefor: "those lamps, motors, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air-conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks for which specific efficiency standards are established by this Act. In addition, the Secretary shall, within 18 months after the date of enactment of this Act, prescribe test procedures for those utility distribution".

Page 130, line 7. Just before "for which" add the following: "packaged terminal air-conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks".

Page 130, line 18. At end of line add the following: ", packaged terminal air-conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks".

Page 131, lines 9–12, strike the following: "lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and".

Page 131, lines 15–18, strike the following: "lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment,".

Page 131, lines 20–22, strike "Except as provided in subsections (d)(3)(B) and (d)(3)(C) of this section".

Page 132, line 1, after "establishing" delete "these"; and after "standards" insert "for utility distribution transformers".

Page 132, line 2, change "take into consideration" to "use".

Page 132, line 4, after "establishing" strike "these"; and after "standards" insert "for utility distribution transformers".

Page 132, lines 13–14, strike "for which the Secretary establishes standards pursuant to this section".

Page 132, line 2, insert "air-cooled" after "of".

Page 133, line 2, insert "air-cooled" after "of".

Page 133, line 7, insert "air-cooled" after "of".

Page 133, line 15, insert "air-cooled" after "of".

Page 133, line 20, insert "air-cooled" after "of".

Page 133, line 25, insert "air-cooled" after "of".

Page 134, line 5. After line 5 insert the following:

(vii) The minimum energy efficiency ratio of water-cooled, evaporatively-cooled and water-source central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity) shall be 9.3 (at a standard rating of 95 degrees Fahrenheit, dry bulb (F db), outdoor temperature for evaporatively cooled equipment, and 85 degrees Fahrenheit entering water temperature for water-source and water-cooled equipment) for products manufactured on or after January 1, 1994.

(viii) The minimum energy efficiency ratio of water-cooled, evaporatively-cooled and water-source central air conditioners and central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 10.5 (at a standard rating of 95 degrees Fahrenheit, dry bulb (F db), outdoor temperature for evaporatively cooled equipment, and 85 degrees Fahrenheit entering water temperature for water-source and water-cooled equipment) for products manufactured on or after January 1, 1994.

(ix) The minimum coefficient of performance of water-source heat pumps less than 135,000 Btu per hour (cooling capacity) shall be 3.8 (at a standard rating of 70 degrees Fahrenheit entering water) for products manufactured on or after January 1, 1994.

Page 134, lines 7–8, strike "for which the Secretary establishes standards pursuant to this section".

Page 134, line 14, insert "air-cooled" after "of".

Page 134, line 22, insert "air-cooled" after "of".

Page 135, line 2, after line 2 insert the following:

(iii) The minimum energy efficiency ratio of water- and evaporatively-cooled central air conditioners and central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 9.6 (according to ARI Standard 360–86) for products manufactured on or after January 1, 1995.

(D) For packaged terminal air conditioners and packaged terminal heat pumps the Secretary shall establish standards at the standard levels set forth for such products in ASHRAE/IES Standard 90.1 as in effect on the date of enactment of this Act. Such standards shall become effective for such products manufactured on or after January 1, 1994. Such standard levels shall be as follows:

(i) The minimum energy efficiency ratio of packaged terminal air conditioners and packaged terminal heat pumps in the cooling mode shall be 10.0 − (0.16 × Capacity [in thousands of Btu per hour]) EER (at a standard rating of 95 degrees Fahrenheit, dry bulb (F db), outdoor temperature) for products manufactured on or after January 1, 1994. If a unit has a capacity of less than 7000 Btu per hour, then 7000 Btu per hour shall be used in the calculation. If a unit has a capacity of greater than 15,000 Btu per hour, then 15,000 Btu per hour shall be used in the calculation.

(ii) The minimum coefficient of performance of packaged terminal heat pumps in the heating mode shall be 1.3+(0.16 × the minimum cooling EER as specified in subparagraph (i) at a standard rating of 47 degrees Fahrenheit, dry bulb (F db)) for products manufactured on or after January 1, 1994.

(E) For warm air furnaces and packaged boilers the Secretary shall establish standards at the standard levels set forth for such products in ASHRAE/IES Standard 90.1 as in effect on the date of enactment of this Act. Such standards shall become effective for such products manufactured on or after January 1, 1994. Such standard levels shall be as follows:

(i) The minimum thermal efficiency at the maximum rated capacity of gas-fired warm-air furnaces with capacity of 225,000 Btu per hour or more shall be 80 percent for products manufactured after January 1, 1994.

(ii) The minimum thermal efficiency at the maximum rated capacity of oil-fired warm-air furnaces with capacity of 225,000 Btu per hour or more shall be 81 percent for products manufactured after January 1, 1994.

(iii) The minimum combustion efficiency at the maximum rated capacity of gas-fired packaged boilers with capacity of 300,000 Btu per hour or more shall be 80 percent for products manufactured after January 1, 1994.

(iv) The minimum combustion efficiency at the maximum rated capacity of oil-fired packaged boilers with capacity of 300,000 Btu per hour or more shall be 83 percent for products manufactured after January 1, 1994.

(F) For storage water heaters, instantaneous water heaters, and unfired water storage tanks the Secretary shall establish standards at the standard levels set forth for such products in ASHRAE/IES Standard 90.1–1989 addendum b. Such standards shall become effective for such products manufactured on or after January 1, 1994. Such standard levels shall be as follows:

(i) Except as provided in subparagraph (vii), the maximum standby loss, in percent per hour, of electric storage waste heaters shall be 0.30+(27/Measured Storage Volume [in gallons]) for products manufactured on or after January 1, 1994.

(ii) Except as provided in subparagraph (vii), the maximum standby loss, in percent per hour, of gas- and oil-fired storage water heaters with input ratings of 155,000 Btu per hour or less shall be 1.30+(114/Measured Storage Volume [in gallons]) for products manufactured on or after January 1, 1994. The minimum thermal efficiency of such units shall be 78 percent (at a 70 degree Fahrenheit water temperature difference).

(iii) Except as provided in subparagraph (vii), the maximum standby loss, in percent per hour, of gas- and oil-fired storage water heaters with input ratings of more than 155,000 Btu per hour shall be 1.30+(95/Measured Storage Volume [in gallons]) for products manufactured on or after January 1, 1994. The minimum thermal efficiency of such units shall be 78 percent (at a 70 degree Fahrenheit water temperature difference).

(iv) The minimum thermal efficiency of instantaneous water heaters with a storage volume of less than 10 gallons shall be 80 percent (at a 70 degree Fahrenheit water temperature difference) for units manufactured on or after January 1, 1994.

(v) Except as provided in subparagraph (vii), the minimum thermal efficiency of instantaneous water heaters with a storage volume of 10 gallons or more shall be 77 percent (at a 70 degree Fahrenheit water temperature difference) for units manufactured on or after January 1, 1994. The maximum standby loss, in percent/hour, of such units shall be 2.30+(67/Measured Storage Volume [in gallons]).

(vi) Except as provided in subparagraph (vii), the maximum heat loss of unfired hot water storage tanks shall be 6.5 Btu per hour per square foot of tank surface area (at an 80 degree Fahrenheit water-air temperature difference).

(vii) Storage water heaters and hot water storage tanks having more than 140 gallons of storage capacity need not meet the standby loss or heat loss requirements specified in subparagraphs (i) through (iii) and subparagraphs (v) through (vi) if the tank surface area is thermally insulated to R–12.5 and if a standing pilot light is not used.

Page 135, line 3, change "(D)" to "(G)".

Page 135, line 7, change "or" to ",".

Page 135, line 3 through page 136, line 3, strike page 135, line 3 through page 136, line 3 and substitute the following therefor:

(G) If ASHRAE/IES Standard 90.1 as in effect on the date of enactment of the National Energy Security Act of 1992 is subsequently amended with respect to any type or class of small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioner, packaged terminal hear pump, warm-air furnace, packaged boiler, storage water heater, instantaneous water heater, or unfired hot water storage tank, then the Secretary shall establish an amended uniform national standard for that product type or class at the minimum level for each effective date specified in the amended ASHRAE/IES Standard 90.1 unless he determines by rule published in the Federal Register, supported by clear and convincing evidence, that adoption of a standard more stringent than the amended ASHRAE/IES Standard 90.1 for such product type of class would result in significant additional conservation of energy and is technologically feasible and economically justified. If the Secretary issues a rule containing such a determination, the rule shall establish an amended uniform national standard for such product type or class if establishment of such standard will result in significant additional conservation of energy and if the establishment of such standard is technologically feasible and economically justified. In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—

(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II) the savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price of, or in the initial changes for, or maintenance expenses of, the

products which are likely to result from the imposition of the standard;

(III) the total projected amount of energy savings likely to result directly from the imposition of the standard;

(IV) any lessening of the utility or the performance of the products likely to result from the imposition of the standard;

(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) the need for national energy conservation; and

(VII) other factors the Secretary considers relevant.

The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product. The Secretary may not prescribe an amended standard under this subparagraph (d)(3)(G) if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. The failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types (or classes). A standard as amended by the Secretary under this subsection shall become effective for products manufactured on or after a date which is

(1) two years after the effective date of the relevant standard in amended ASHRAE/IES Standard 90.1 for small commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, and

(2) three years after the effective date of the relevant standard in amended ASHRAE/IES Standard 90.1 for large commercial package air conditioning and heating equipment.

except that an amended standard issued by the Secretary pursuant to a rule under this subparagraph (d)(3)(G) shall become effective for products manufactured on or after a date which is four years after the date the rule is published in the Federal Register.

(H) The criteria specified in subparagraph (d)(3)(G) shall apply only to products listed in subparagraph (d)(3)(G).

Page 136, line 14, insert "(a)" after "(4), and change "These standards" to "Standards prescribed or established under this subsection (d)".

Page 136, line 6, after the end of the line, add the following three subparagraphs:

(b) Notwithstanding subparagraphs (a), a standard prescribed or established under this subsection (d) shall not preempt a standard for such a product in a building code for new construction if the standard in the building code does not require that the energy efficiency of such product exceed the applicable minimum energy efficiency requirement in amended ASHRAE/IES Standard 90.1, *Provided*, That such standard in the building code does not take effect prior to the effective date of amended ASHRAE/IES Standard 90.1.

(c) Notwithstanding subparagraph (a), a standard prescribed or established under this subsection (d) shall not preempt the standards of the State of California for water-source heat pumps below 135,000 Btu per hour (cooling capacity) that become effective on January 1, 1993, which standards are set forth in Table C-6 of the California Code of Regulations, Title 24, Part 2, Chapter 2-53.

(d) Notwithstanding subparagraph (a), a standard prescribed or established under this subsection (d) shall not preempt a state regulation which has been granted a waiver by the Secretary. The Secretary may grant a waiver pursuant to the terms, conditions, criteria, procedures and other requirements specified in Section 327(d) of this Act.

Page 136, line 8, change "(D)" to "(G)".

Page 137, line 10, after line 10 add a new paragraph (3) as follows:

(3) In the case of products for which the Commission prescribes a labeling rule under paragraph (1) manufacturers and importers of such equipment shall establish efficiency ratings for each type of equipment in accordance with the applicable test procedures, and

(a) include the efficiency rating of the equipment on or near the permanent nameplate attached to each piece of equipment; and

(b) prominently display the efficiency rating of the equipment in new equipment catalogs used by the manufacturer or importer to advertise the equipment.

(c) such other markings as the Secretary may determine are needed solely to facilitate enforcement of the efficiency standards established under this Act.

In developing these labeling requirements for electric motors, the Commission shall take into consideration NEMA Standadrds Publication MG1-1987.

(4) Effective 360 days after a test procedure rule applicable to any product is established under this subsection, no manufacturer, distributor, retailer, or private labeler may make any representation—

(1) in writing (including any representation on a label), or

(2) in any broadcast advertisement.

respecting the energy consumption of such equipment or cost of energy consumed by such equipment, unless such equipment has been tested in accordance with such test procedure and such representation fairly disclosed the results of such testing."

Page 138, line 4, After line 4, redesignate subsections (h) and (i) as subsections (i) and (j), respectively, and add a new subsection (h) as follows:

(h)(1) Effective on the effective date of this Act, this section prempts any State regulation insofar as such State regulation provides at any time for the disclosure of information with respect to any measure of energy consumption of any covered product if—

(A) such State regulation requires testing or the use of any measure of energy consumption or energy descriptor in any manner other than that provided under this section; or

(B) such State regulation requires disclosure of information with respect to the energy use or energy efficiency of any product subject to this section other than information required under this section.

(2) For purposes of this section, the term 'State regulation' means a law, regulation, or other requirement of a State or its political subdivisions.

Page 140, line 6, after line 6, add a new subsection (b) as follows:

(b) Section 340(2)(B) of the Energy Policy and Conservation Act (42 U.S.C. 6311) is amended by striking "(v) air conditioning equipment;" and "(xi) furnaces;" and by redesignating items (vi), (vii), (viii), (ix), (x), (xii), (xiii), and (xiv) therein as items (v), (vi), (vii), (viii), (ix), (x), (xi), and (xii), respectively.

AMENDMENT No. 1603

(Purpose: To encourage the transfer of renewable energy technology to end-users)

On page 72, line 2, add the following new subparagraphs:

"(iv) expand training and information dissemination programs in cooperation and participation with industry using existing technology transfer programs for such sums that may be necessary in fiscal years 1993, 1994, 1995, and

(v) assist existing renewable energy industry consortia and state energy offices to work cooperatively with existing technology transfer programs.

Mr. DECONCINI. Mr. President, I am offering an amendment which directs the Secretary of Energy to expand the Department's renewable energy technology transfer efforts and support partnerships between Federal, State and private sector renewable energy technology transfer programs.

Mr. President, according to many economists, the United States can maintain its competitive edge in renewable energy research by more effectively transferring technology research to the private sector. While the Department's renewable energy budget has grown over the last 3 fiscal years, the technology transfer component represents less than 1 percent of the total appropriated amounts.

The Department of Energy supports several nonprofit entities which are already working with the U.S. renewable energy industry. These relationships need to be enhanced. Also, laboratory and university research should be transferred to the industry and ultimately, potential end-users of this technology. To this end, the amendment directs the Department of Energy to expand their technology transfer activities.

Additionally, my amendment also directs the Secretary to assist and foster partnerships between the U.S. renewable energy and energy efficiency trade association consortia, State energy offices, the private sector and the Federal Government. By coordinating private and public sector efforts in technology transfer, we will be in a much better position to compete in the extremely aggressive world marketplace in this technology.

Mr. President, currently, 9 percent of our total U.S. energy supply currently comes from alternative energy sources. If this country were to undertake an aggressive program to implement renewable energy programs, one-fifth of the total energy demand of this country could be met from those sources.

S. 2166, contains many outstanding provisions to address this deficiency. There are measures in it concerning the development and implementation of alternative energy resources as well energy conservation. While it does not

have everything I would have wanted, it moves us in the right direction and I commend the chairman and ranking member for their efforts in this regard. With this legislation, we are taking significant steps to reduce our reliance on fossil fuels. My amendment simply expands on this effort be ensuring that the research done in the field of alternative energy is transferred to end-users in an effective and efficient manner. I ask that my colleagues join me in supporting this amendment.

AMENDMENT NO. 1604

(Purpose: Amendments to facilitate the use of renewable technologies to reduce energy consumption in buildings)

On page 108, line 20, delete the words "code, and" and insert the following: "codes and standards,".

On page 108, line 23, delete "code." and insert the following: "codes and standards, and methods which will enhance and facilitate the use of renewable technologies.".

Page 114, line 20, following "that", insert the following: "both active and passive".

Page 114, line 22, after the semicolon, add the following new paragraph and renumber accordingly:

"(3) that such rating shall take into account the benefits of peak load shifting construction practices;".

Page 125, line 6, following "programs", insert the following: ", including the effects of building construction practices designed to obtain peak load shifting,".

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, those amendments have been cleared on both sides.

Mr. WALLOP. They have, Mr. President.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendments.

The amendments (Nos. 1598 through 1604) were agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

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

The motion to lay on the table was agreed to.

Mr. SEYMOUR. Mr. President, the Department of Defense [DOD], Department of Energy [DOE], and the Office of Management and Budget [OMB] have put forward a new proposal to lease the Elk Hills Naval Petroleum Reserve. OMB has calculated that through the enhanced efficiency and increased production associated with leasing, the proposal would generate almost $1.5 billion over 5 years of additional revenues to the Federal Treasury.

Would the chairman and the ranking Republican member of the Armed Services Committee, which has jurisdiction over the issue, favor exploring the possibility of achieving such savings for the Federal Treasury if it could be done without adversely affecting the Nation's strategic petroleum reserves?

Mr. NUNN. Mr. President, in these times of ballooning Federal budgets, any measure that can reduce the size of our Nation's deficit without jeopardizing its defense is of great interest to me. I would be pleased to explore the possibility of leasing Elk Hills through hearings before the Committee on Armed Services.

Mr. WARNER. Mr. President, the leasing of Elk Hills Naval Petroleum Reserve was proposed by the Bush administration as part of the national energy strategy. The administration has also included the provision in its fiscal year 1993 budget. I also believe that the measure should be given full consideration by the Armed Services Committee.

Mr. WALLOP. Mr. President, I likewise ask the distinguished chairman of the Armed Services Committee whether he would likewise be willing to explore in a hearing the potential for the sale of the Teapot Dome Naval Petroleum Reserve?

Mr. NUNN. Yes, I would likewise be pleased to also explore the possibility of selling the Teapot Dome Naval Petroleum Reserve during the upcoming Senate Armed Services Committee hearing cycle and I will ask our subcommittee of jurisdiction to particularly explore this subject.

Mr. SEYMOUR. Mr. President, I would like to thank the distinguished chairman and ranking member of the Armed Services Committee for their assistance on this important issue, and I look forward to participating in hearings on the issue at the earliest possible date.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that Senator CONRAD be added as an original cosponsor of amendment No. 1575, which was adopted earlier.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1605

(Purpose: Expressing the sense of the Senate that relevant congressional committees should study the possibility of revenue neutral legislation which shifts taxation from income to motor fuels in order to reduce the threats to national security and the environment posed by overreliance on imported oil)

Mr. JOHNSTON. Mr. President, I will shortly send an amendment to the desk on behalf of Mr. ROBB which expresses the sense of the Senate that relevant congressional committees should study the possibility of revenue-neutral legislation which shifts taxation from income to motor fuels in order to reduce the threats to national security and the environment posed by overreliance on imported oil. I send the 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 Louisiana [Mr. JOHNSTON] for Mr. ROBB, proposes an amendment numbered 1605.

Mr. JOHNSTON. 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:

SEC. . NATIONAL SECURITY TAX SHIFT.

(a) FINDINGS.—The Senate finds that—

(1) Conservation must be at the heart of any effective long-term national energy strategy; and increasing the motor fuels tax would encourage Americans to purchase more fuel efficient vehicles, car pool, and use alternative forms of transportation.

(2) By encouraging conservation and the market for alternative fuels, increasing the motor fuels tax would reduce our reliance on imported oil, and would reduce the likelihood that American troops will need to be sent abroad to secure the free flow of oil.

(3) Increasing the motor fuels tax would reduce automobile pollution, and, in particular, would reduce the emission of carbon dioxide, a key "greenhouse" gas.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that as part of the Nation's Energy Strategy, the Senate Finance and House Ways and Means Committees should study the possibility of legislation to shift some amount of taxation from the income tax to the motor fuels tax to encourage conservation and alternative fuels, provided that: (1) the revenue generated by the increase in motor fuels tax is shifted to taxpayers in the form of income tax reductions so that the package is revenue-neutral, does not represent a net tax increase on the average American family, and is at least as progressive as the current tax code; (2) the tax shift does not become effective until the current recession is over; and (3) the tax shift is phased in gradually to allow consumers and industries to adjust.

Mr. WALLOP. Mr. President, the minority approves of this.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1605) was agreed to.

Mr. JOHNSTON. 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 Chair, in his capacity as a Senator from the State of Kentucky suggests the absence of a quorum. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. JOHNSTON. Although the Senate cannot address the issue of energy tax incentives in this legislation, I believe that Congress must consider energy tax measures when fashioning a comprehensive national energy strategy. I ask that a copy of a letter sent to the chairman and ranking member of the Senate Finance Committee be included in the RECORD.

My colleague from South Dakota, Senator DASCHLE, chairman of the Finance Committee's Subcommittee on Energy Taxation, has introduced legislation, S. 2100, which offers an array of tax measures designed to promote development of renewable energy technologies and to encourage conservation of existing energy resources. Included in the bill are provisions to expand and extend the existing investment tax credit for solar and geothermal technologies, as well as a 2.0-cent per kilowatt-hour production tax credit for wind, biomass and other renewable sources of energy. I wish to commend the Senator for his leadership on this important issue, and encourage the Finance Committee to move forward expeditiously in enacting an energy tax package that includes these provisions.

Mr. DASCHLE. I want to thank my colleague from Louisiana for his interest in S. 2100 and specifically the provisions promoting the development of renewable technologies. His support is greatly appreciated.

With the notable exception of PURPA, and last year's Public Law 101-218, the Federal Government has done little to increase penetration for renewable energy technologies. Some renewable industries have managed to make great strides despite scant Federal support, while others are still struggling for mere existence, much less commercial viability.

Wind energy has reduced its costs from 25 to 30 cents per kilowatt-hour to between 6 and 8 cents. In California alone, wind provides enough power—3 billion kilowatt-hours—for the residential needs of over 1 million people. Geothermal has made similar strides. Geothermal energy facilities now produce approximately 2,600 megawatts at 6 cents per kilowatt-hour. Both of these technologies could produce more, given a more forward-looking energy tax policy. S. 2100 contains a 2-cent per kilowatt-hour production tax credit for renewable energy. This proposal is similar to one that was in the Department of Energy's draft national energy strategy but was later rejected by the White House.

The solar industry, while quite promising, is further from commercial viability. Solar thermal electric technologies currently produce 385 megawatts of electricity at 8-cents per kilowatt-hour, and solar thermal applications for water heating and solar industrial process heat now offset 1,344 megawatts. The benefit to solar technologies of the existing investment tax credit is dramatically limited by the piece-meal extension of that credit. S. 2100 would not only extend the ITC for 10 years, but increase it to 20 percent.

In the current debate over how to promote economic growth in our country, I cannot think of a more appropriate area for the United States to take a long-term view and establish global leadership than in the area of renewable technologies. If we do not provide the incentives necessary to promote development in this area—and do it now—we are going to lose it all. These vital emerging technologies will simply go abroad.

As my colleague from Louisiana has pointed out, S. 2100 would provide an array of tax and trade provisions designed to promote the development of renewable technologies and to encourage conservation of our existing resources. Let me also point out that many of these provisions are important from an environmental standpoint, as well as an energy security perspective. They include: incentives for the development of motor vehicles that run on clean-burning fuels or electricity; increased tax incentives for the use of mass transit; and a provision clarifying that cash rebates from utilities to their customers for conservation measures are not taxable.

Again, I want to thank the chairman of the Energy Committee for his interest, and hope that he and others will support rapid enactment of my legislation as part of a comprehensive national energy policy.

Mr. JOHNSTON. I know that the Senator from South Dakota has held 2 days of hearings on these issues, and I understand that an additional hearing is being considered. The subcommittee chairman's role in helping to fashion a comprehensive strategy should be encouraged by the Senate, and I want to let him know that I will do everything I can do to encourage full consideration of energy tax legislation like the measures found in S. 2100.

Mr. DASCHLE. Mr. President, I ask unanimous consent that a summary of S. 2100 be printed in the RECORD.

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

THE RENEWABLE ENERGY AND ENERGY CONSERVATION ACT OF 1991

TITLE I: RENEWABLE ENERGY TAX INCENTIVES

Subtitle A: Generation of Electricity From Renewable Sources

Extends through the end of the year 2001 the current law investment tax credit available to businesses that construct solar and geothermal energy facilities. Increases the credit to 20%.

Allows public utility properties to take the investment tax credit for solar and geothermal energy facilities.

Permits taxpayers that fall under the Alternative Minimum Tax to take the investment tax credit. The amount of the credit that could be taken against the AMT would be capped at 50%, with the ability to carry excess credits forward.

Establishes a new tax credit for the domestic production of electricity through qualified renewable technologies, e.g., solar, wind, geothermal, photovoltaic, and biomass. The credit initially would be equal to 2.0 cents per kilowatt hour and phased down to .3 cents per kilowatt hour by the year 2001. Taxpayers would be prevented from "double-dipping," i.e., taking advantage of both the investment tax credit and the product tax credit simultaneously.

Subtitle B: Alternative Transportation Fuels Tax Incentives

Establishes a deduction for the cost of acquiring a vehicle that utilizes clean-burning fuels (natural gas, liquefied petroleum gas, and any other fuel if at least 85% of the fuel is methanol, ethanol, and any other alcohol, ether, or any combination of the foregoing). The permissible deduction amount would be up to $2,000 per vehicle ($5,000 for a medium-size truck and $50,000 for a heavy truck). A deduction of up to $75,000 per location also would be permitted for clean-burning motor vehicle refueling property, e.g., specialized gas pumps. Effective for property placed in service after September 30, 1992 and before October 1, 2002.

Allows individuals and businesses to deduct 25% of the purchase price of electric-powered vehicles.

Imposes a 50 cent-per-gallon customs duty on imported methanol, including the methanol portion of imported fuel additives derived from methanol, such as Methyl Tertiary Butyl Ether (MTBE).

TITLE II: ENERGY CONSERVATION TAX INCENTIVES

Subtitle A: Alternatives to Single-Passenger Automobiles

Includes employer-provided parking under fringe benefit rules along with mass transit, vanpool and carpool subsidies. Permits employee to exclude up to $75-worth of (1) an employer-provided mass transit, vanpool or carpool subsidy; or (2) the value of "qualified" employer-provided parking. Qualified parking is either (1) owned and operated by the employer and used substantially by employees of the employer; or (2) on or near a location from which an employee of the employer commutes to work by mass transportation, vanpool or carpool.

Subtitle B: Other Conservation Incentives

Provides that individual, commercial and industrial taxpayers may exclude from gross income any rebate provided by a public utility (electric, gas and water) for the purchase or installation of an energy conservation measure.

Subtitle C: Fuel Efficient Automobiles

Expands the current law "gass guzzler/gas sipper" tax, which imposes a tax or provides a rebate on the domestic sale of new motor vehicles based on average fuel economies of that class of vehicle. In addition, adds a separate coefficient for the tax based on crash safety data.

AMENDMENT NO. 1606

(Purpose: To require electric utilities to evaluate cogeneration and district heating and cooling applications as part of the planning and selection process for new energy resources)

Mr. JOHNSTON. Mr. President, 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 Louisiana [Mr. JOHNSTON], for Mr. WELLSTONE, proposes an amendment numbered 1606.

Mr. JOHNSTON. 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 157, line 25, insert "cogeneration and district heating and cooling applications," after "efficiency,".

Mr. WELLSTONE. Mr. President, I am pleased to join with my colleagues in sponsoring this amendment. It offers a constructive resolution of our differences. I wish to thank Senator JOHNSTON, Senator WALLOP, and their staffs for engaging in the discussions which have led to this proposal.

Of particular concern to me was the proposal in S. 2166 to turn over to the States regulatory authority over most of the hydroelectric dams in this country. I had prepared an amendment to strike this section because it had enormous and complex implications for the environment and for the hydropower industry.

In addition, I supported the amendment proposed by Senator ADAMS which would have protected the authority of Federal land management agencies to condition hydroelectric development on public lands. Senator ADAMS and his staff worked diligently through our discussions to produce a substitute proposal which we believe will enhance environmental protection and at the same time remove unnecessary obstacles faced by the hydroelectric industry.

Senator ADAMS and I were prepared to offer a joint amendment addressing our concerns about these issues by simply striking the relevant provisions of S. 2166. Instead, with the cooperation of the other sponsors of this amendment, we have produced a proposal which I believe is a more constructive resolution of industry's concerns.

In addition, this proposal includes language regarding NEPA compliance which was outside of the discussions in which Senator ADAMS and myself were engaged. It is our understanding that this language was developed in consultation with members of the Senate Environment and Public Works Committee.

Mr. President, instead of using more of the Senate's time with a detailed discussion of these issues, I ask unanimous consent that a letter from several national conservation groups discussing the hydroelectric provisions of S. 2166 be printed in the RECORD following these remarks.

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

AMERICAN RIVERS, AMERICAN WHITEWATER AFFILIATION, FRIENDS OF THE RIVER, NATIONAL AUDUBON SOCIETY, NATIONAL WILDLIFE FEDERATION, SIERRA CLUB, TROUT UNLIMITED, THE WILDERNESS SOCIETY,

February 4, 1992.

DEAR SENATOR: S. 2166, the National Energy Security Act of 1992, is currently under consideration in the Senate. Our organizations are very concerned that provisions within the bill relating to federal licensing of hydroelectric facilities would significantly weaken existing environmental protections and would not result in any real increase in energy production. We therefore strongly encourage you to vote in support of the following amendments:

1. Wellstone Amendment to delete provision which exempts "small" hydroelectric projects from federal licensing.

S. 2166 would automatically eliminate federal licensing jurisdiction over hydroelectric projects of 5MW or less capacity, opening the door to deregulation of two-thirds of all currently licensed hydroelectric power projects, as well as most future hydroelectric development. The provision would exempt hydropower projects from most federal environmental and cultural resource laws, such as the National Environmental Policy Act, ("NEPA") and the consultation requirements of the Endangered Species Act, by the elimination of a federal role. The provision is particularly disturbing given that hundreds of the nation's oldest and most environmentally damaging hydroelectric projects are up for relicensing over the next few years and could be statutorily exempted from federal environmental laws.

2. Adams/Wirth/Leahy (possibly) Amendment to delete provision which eliminates the federal land managing agencies' abilities to set mandatory conditions of hydropower projects.

S. 2166 would eliminate the 70-year-old authority of federal land management agencies to place mandatory conditions on hydroelectric power facilities located on federally reserved lands, such as national forests, recreation areas, wildlife refuges, BLM special management areas, and military lands. More than 220 projects are located on national forest lands alone, with recent speculative proposals for hundreds more, all of which could be affected by this provision. Giving FERC sole authority over hydroelectric facilities on federal lands seriously undermines the mandate of the land managing agencies to protect and manage lands under this respective jurisdictions.

3. Possible Amendment to delete provision which establishes the Federal Energy Regulatory Commission ("FERC") as the statutorily defined "lead" agency for meeting the requirements of the National Environmental Policy Act and other environmental reviews.

As written, the bill would significantly weaken the administration of NEPA by granting FERC unprecedented statutory lead agency status. FERC, which has a dismal environmental record, would set all terms for other federal agencies' NEPA reviews relating to such projects and setting time limits for all environmental submissions by federal, state, and tribal governments. This approach fundamentally conflicts with the NEPA regulations of the President's Council on Environmental Quality.

4. Possible Amendment to require cost-sharing and to delete a provision which authorizes open-ended construction of water conservation projects for energy purposes.

The bill would authorize studies of all federal dams and water projects to increase hydroelectric power generation without requiring cost-sharing and analysis of related environmental concerns. It also authorizes both studies and open-ended construction of "water conservation" projects by the Bureau of Reclamation to increase available power at Reclamation dams for sale to electric utilities by reducing water or energy use at western irrigation projects. Water projects should not be authorized for construction without the opportunity for Congress to first consider feasibility studies and environmental review documents. These provisions potentially affect hundreds of dams nationwide.

We strongly urge you to vote in favor of these amendments to S. 2166.

Elizabeth Norcross, American Rivers, Ronald Stork, Friends of the River; John Echeverria, National Audubon Society, William Maxon, Trout Unlimited; Richard Bowers, American Whitewater Affiliation; David Conrad, National Wildlife Federation; David Gardiner, Sierra Club; Don Hellmann, The Wilderness Society.

Mr. JOHNSTON. Mr. President, this amendment on behalf of Senator WELLSTONE requires utilities to evaluate cogeneration and district heating and cooling applications in selection for new energy resources. It has been cleared on both sides.

Mr. WALLOP. Mr. President, that is the case.

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

The amendment (No. 1606) was agreed to.

Mr. JOHNSTON. 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.

AMENDMENT NO. 1607

(Purpose: To formulate a plan for the strategic diversification of U.S. oil imports and for the development of the energy resources in the former Soviet Union)

Mr. JOHNSTON. Mr. President, 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 Louisiana [Mr. JOHNSTON], for Mr. EXON, proposes an amendment numbered 1607.

Mr. JOHNSTON. 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:

SEC. . STRATEGIC DIVERSIFICATION.

The Office of Barter within the U.S. Department of Commerce and the Interagency Group on Countertrade shall within six months from the date of enactment report to the President and the Congress on the feasibility of using barter, countertrade and other self-liquidating finance methods to facilitate the strategic diversification of U.S.

oil imports through cooperation with the former Soviet Union in the development of their energy resources. The report shall consider among other relevant topics the feasibility of trading American grown food for Soviet produced oil, minerals or energy.

Mr. EXON. Mr. President, I rise to offer an amendment to require the Office of Barter within the U.S. Department of Commerce and the Interagency Group on Countertrade to report to the President and the Congress on the feasibility of using barter, countertrade, and other self-liquidating finance methods to facilitate the strategic diversification of United States oil imports through cooperation with the former Soviet Union in the development of their energy resources. The report will consider among other relevant topics the feasibility of trading American-grown food for Soviet produced oil, minerals, or energy.

Strategic diversification recognizes the simple fact that America needs oil and the former Soviet Union needs food—and countless other goods produced in the United States. This amendment attempts to start a process to match the needs of these former adversaries. It attempts to turn a former enemy into a future customer.

The United States will be importing oil for many years. The United States should diversify its oil purchases in a manner which will best serve American interests. In this case, it is in the American interest to expand and diversify the available sources of oil and help create new markets for American products.

This amendment seeks the consideration of an oil import strategy which can meet our energy needs and serve our economic and trade needs as well.

The former Soviet Union holds the planet's largest reserves of oil. Because the new democracies of the former union have 1950's and 1960's oil exploration and extraction technologies, in recent years oil production in the region has plummeted.

This amendment calls on the President to consider a long-term strategy to work with the former Soviet Union and develop its energy production through the use of barter, countertrade, and other nontraditional means of finance including trading American food for Soviet oil.

A barrel of oil purchased or bartered with the former Soviet Union could facilitate additional American sales of food and products whereas a barrel of oil from a Persian Gulf nation would simply add to a bilateral trade deficit.

In other words, oil from the former Soviet Union could equal new American exports. The United States is falling behind the curve. France, Poland, Germany, and Cuba all have announced food for oil transactions. There is great interest from American business in such transactions; unfortunately there has been limited leadership from the U.S. Government.

One key exception is Ambassador Robert Strauss. I met with Ambassador Strauss and explained my interest in barter and countertrade transactions. I was delighted to learn of the Ambassador's shared interest and have read reports of this advocacy of food for oil exchanges with the former Soviet Union. Now is the time to seize the opportunities created by a freed Soviet Union. Now is also the time to kick the Office of Barter created in 1988 into full gear.

This amendment is intended to nudge the President into mobilizing the expertise in his Government to consider a commonsense approach to expanding U.S. trade and meeting U.S. energy needs.

Thank you, Mr. President.

Mr. JOHNSTON. Mr. President, this amendment on behalf of Senator EXON, cleared on both sides, simply requires the preparation of a study on the feasibility of using a barter to facilitate the strategic diversification of oil imports through cooperation with the former Soviet Union.

Mr. WALLOP. Mr. President, the minority thoroughly agrees with the thrust of the amendment.

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

The amendment (No. 1607) was agreed to.

Mr. JOHNSTON. 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.

AMENDMENT NO. 1608

(Purpose: To preserve Federal Energy Regulatory Commission authority over hydroelectric licensing, and for other purposes)

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

The PRESIDING OFFICER (Mr. EXON). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for himself, Mr. WALLOP, Mr. WELLSTONE, Mr. ADAMS, Mr. LUGAR, Mr. LEAHY, and Mr. BRADLEY, proposes an amendment numbered 1608.

Mr. JOHNSTON. 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:

Beginning on page 93, line 20, delete section 5301 in its entirety and substitute the following:

"SEC. 5301. STREAMLINING REGULATION UNDER THE FEDERAL POWER ACT.—The Federal Power Act, as amended, (16 U.S.C. 791a et seq.) is further amended by inserting in section 4 ', and for the purposes of subsections (h) and (i), the Commission shall' after 'empowered' and inserting the following after subsection (g):

"(h) Establish procedures that, to the extent practicable, provide for the earliest identification and performance of all studies and analyses required to be performed in conjunction with an application for a license under this part.

"(i) Within one year after enactment of this subsection, enter into memoranda of understanding with each Secretary under whose supervision a reservation falls which provides for:

"(1) timely submission by the Secretary to the Commission of any proposed terms and conditions which are relevant to the Secretary's statutory responsibilities for the reservation with respect to the proposed project;

"(2) establishment and implementation of a process for resolution of disputes, if any, between the Commission and the Secretary concerning conditions proposed by the Secretary in connection with the licensing of a project; and,

"(3) identification and implementation of measures to avoid duplication of effort, delay, and costs to all parties in connection with the licensing of a project.".

Beginning on page 98, line 9, delete section 5302 in its entirety and substitute the following:

"SEC. 5302. (a) MEMORANDA OF UNDERSTANDING.—The Commission and all relevant federal agencies are directed to enter into memoranda of understanding which will establish procedures for a consolidated review to the fullest extent possible under the National Environmental Policy Act of 1969 of federal actions affecting the authorization of hydroelectric projects subject to the jurisdiction of the Commission.

"(b) THIRD PARTY CONTRACTING.—

"(1) Where environmental documents are prepared in connection with an application for a license under Part 1 of the Federal Power Act, the Commission may permit, at the election of the applicant, a contractor, consultant or other person funded by the applicant and chosen by the Commission from among a list of such individuals or companies determined by the Commission to be qualified to do such work, to prepare such environmental document. The contractor shall execute a disclosure statement prepared by the Commission specifying that it has no financial or other interest in the outcome of the project. The Commission shall establish the scope of work and procedures to assure that the contractor, consultant or other person has no financial or other potential conflict of interest in the outcome of the proceeding. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.

"(2) Where an environmental assessment is prepared in connection with an application for a license under Part 1 of the Federal Power Act, the Commission may permit an applicant, or a contractor, consultant or other person selected by the applicant, to prepare such environmental assessment. The contractor shall execute a disclosure statement prepared by the Commission specifying that it has no financial or other interest in the outcome of the project. The Commission shall institute procedures, including pre-application consultations, to advise potential applicants of studies or other information foreseeably required by the Commission. The Commission may allow the filing of such applicant-prepared environmental assessments as part of the application. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.".

On page 282, line 1, delete the words "MAJOR FED-" and lines 2 through 19 and insert in lieu thereof:

"MEMORANDA OF UNDERSTANDING.—The Commission and all relevant federal agencies are directed to enter into memoranda of understanding which will establish procedures for consolidated review to the fullest extent possible under the National Environental Policy Act of 1969 of federal actions affecting the authorization of natural gas facilities subject to the jurisdiction of the Commission.".

On page 282, line 20, delete "'(b)" and insert in lieu thereof "(b) ENVIRONMENTAL IMPACT STATEMENTS.—".

On page 282, line 22, delete "this" and insert in lieu thereof "the Natural Gas.".

On page 282, line 23, strike "shall" and insert "may'.

On page 282, line 24, insert "and chosen by the Commission from among a list of such individuals or companies determined by the Commission to be qualified to do such work", after "applicant".

On page 282, line 25, after "document." insert "The contractor shall execute a disclosure statement prepared by the Commission specifying that it has no financial or other interest in the outcome of the project.", and delete "The Commission shall" and all that follows through "work." on page 283, line 4.

On page 283, line 11, delete "'(C)" and insert in lieu thereof "(c) ENVIRONMENTAL ASSESSMENTS.—".

On page 283, line 14, strike "shall" and insert "may".

On page 283, line 16, after "assessment." insert "The contractor shall execute a disclosure statement prepared by the Commission specifying that it has no financial or other interest in the outcome of the project.".

On page 283, line 20, stike "shall" and insert "may".

On page 283, delete lines 24 and 25 and, on page 284, delete lines 1 and 2, and insert in lieu thereof:

"(d) Any environmental review undertaken by the Commisson pursuant to the National Environmental Policy Act of 1969, or by a project sponsor must include those facilities subject to the Natural Gas Act and Natural Gas Policy Act of 1978, but will not include nay related nonjurisdictional facilities unless the Commission's control and responsibility over those facilities is sufficient to cause the private action to become a Federal action. To determine whether sufficient control and responsibility by the Commission exists, the following factors must be considered:

"(1) whether the regulated activity comprises merely a link in a corridor-type project;

"(2) the extent of the nonjurisdictional facilities in the immediate vicinity of the regulated activity;

"(3) the extent to which the entire project will be within the jurisdiction of the Commission; and

"(4) the extent of cumulative Federal control and responsibility.

"(e) As part of a required NEPA review of proposed facilities, at the beginning, FERC shall meet with the applicant, other affected Federal, State and local agencies, affected Indian Tribes, if any, and other interested persons to identify issues to be analyzed and when serving as the land agency, FERC may allocate assignments, and establish time frames necessary for the preparation of an Environmental Impact Statement (EIS).".

Mr. ADAMS. Mr. President, I rise today in support of the amendment offered by myself and the distinguished Senator from Minnesota. I am very pleased to have been able to work this issue out and to have this amendment accepted by the committee. This is an important issue, and I believe we have achieved a reasonable compromise which addresses the major concerns of all interested parties. I commend Senator WELLSTONE and his staff, all of the Senators who signed our original letter and their staff, Senators JOHNSTON and WALLOP and the committee staff for their hard work to make this compromise possible.

Mr. President, I come from a State that is one of the Nation's leaders in hydropower production. As such, I had deep reservations about the hydroelectric provisions of S. 2166, particularly those dealing with the mandatory conditioning authority of Federal land managers and the 5 megawatt exemption.

In Washington State and across the Nation, hydropower is a critically important resource which must be managed in an extraordinarily careful, deliberate manner. The Adams/Wellstone amendment will not only allow that careful planning process to continue consistent with existing law, it will improve the timeliness and efficiency of hydropower licensing. This is the best possible result for FERC, for the Federal land managers, and for the hydropower industry.

As many of you know, the entire Pacific Northwest region is struggling with a complex set of problems related to saving and restoring depleted salmon runs. No activity has contributed more to the destruction of the Northwest's salmon, steelhead, and sea-run cutthroat-trout populations than hydroelectric development. In response to this threat, we have worked extremely hard to craft a regional hydroelectric planning process in order to meet the region's power needs and to provide for responsible regulation and protection of our fisheries. This process is founded on existing law in hydropower licensing. It is a process in which the Federal land managers play a critical role.

For example, the Forest Service has jurisdiction over 50 percent of all of the salmon habitat in the region and is deeply involved in salmon recovery planning efforts. Many other agencies and utilities participate in that process through the Forest Service. If we are to protect the growing Federal investment in salmon runs in the region, the Forest Service and the other Federal land managers must retain their authority to set conditions on FERC hydro projects. One arm of the Federal Government should not be tearing down what another arm is trying to construct.

The Federal land managers have had the authority to set mandatory conditions on federally licensed hydroelectric projects for 70 years. They were given this authority in order to protect the lands and resources under their charge. It simply does not make sense—particularly given the comprehensive planning process underway in the Northwest—to give the Federal Energy Regulatory Commission the authority to override the United States Forest Service, the Bureau of Land Management [BLM], and other Federal agencies in setting hydropower license conditions on public lands.

In the State of Washington, more than 28 percent of our land area is federally owned, and the vast bulk of small-scale hydropower proposals involve these lands, especially developers interested in siting projects on national forest streams. There is too much at stake on these lands to turn their fate over to the Federal Energy Regulatory Commission. A poorly sited or improperly conditioned hydropower project can wipe out years of restoration work and fisheries-management efforts in a single stroke.

Under the umbrella of the Northwest Power Planning Council's [NPPC] energy, fish and wildlife planning process, I believe we can continue to work together as a region to come to terms with these complex issues. The NPPC, BPA, and the Public Utility Districts cooperate very closely with the managers of Federal public lands throughout the Pacific Northwest. Our amendment will allow this process to continue unabated. At the same time, it will allow hydro developers, in conjunction with FERC, to enter into agreements to ensure the timely processing of their license applications. This is a reasonable and balanced resolution to the concerns of the land managers, the regional planners, and the hydroelectric community.

Mr. President, I am very pleased to have been able to forge such a reasonable and, I believe, responsible resolution to this complicated issue. This makes sense for the Washington State, the Pacific Northwest, and the Nation. Again, I thank Senator WELLSTONE and the other Senators and staff who worked to make this compromise possible.

Mr. JOHNSTON. Mr. President, this amendment on behalf of myself, Senators WALLOP, WELLSTONE, and ADAMS addresses a series of issues in the hydroelectric power natural gas sections of S. 2166.

The amendment should lead to improvements in the hydroelectric licensing process and make it more timely and rational and less expensive to the parties.

The amendment will preserve Federal land manager's existing authority to set conditions for hydro projects.

The amendment also strikes the provision of S. 2166 which would have granted States jurisdiction to license 5 megawatt and smaller hydro projects and addresses concerns expressed by the Committee on Environment and Public Works with the bill's treatment of NEPA compliance in connection

with hydro projects and gas pipeline licensing.

While I support this amendment, I think it reflects a tolerable compromise. I want my colleagues to know I would much rather have preserved the original bill language. The bill as introduced sent a clear signal that we should get on with the important business of licensing and constructing safe and environmentally sound hydro projects, and issuing certificates that need natural gas pipelines.

These amendments are a small step in the right direction but do not go as far as I would like to have gone or as far as I think the country needs to go.

Mr. WALLOP. Mr. President, it is my understanding that the new paragraph 1D of subsection (d) on page 283 is intended to be interpreted as meaning that the determination of Federal control and responsibility will be limited to the portions of the project beyond the limits of Commission jurisdiction, where the cumulative Federal involvement of the Commission and other Federal agencies is sufficient to grant legal control over such additional portions of the project.

With that understanding, I say that the minority agrees, and I ask unanimous consent that Mr. LUGAR be added as a consponsor.

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

The question is on agreeing to the amendment.

The amendment (No. 1608) was agreed to.

Mr. WALLOP. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I will shortly send an amendment to the desk on behalf of Senator MURKOWSKI. The proposed project is a run-of-the-river hydro project to supply needed electric power to three remote Alaskan Native villages. The proposed project will free the villages from air quality impacts, potential fire hazards, and devastating economic dependence, and the proposed language would remove these projects from FERC jurisdiction.

AMENDMENT NO. 1609

Mr. JOHNSTON. Mr. President, 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 Louisiana [Mr. JOHNSTON], for Mr. MURKOWSKI, proposes an amendment numbered 1609.

Mr. JOHNSTON. 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 105, at the end of line 20 strike "." and insert "; and (3) a project located near Nondalton, Alaska, with application numbered EL88-25-001."

Mr. WALLOP. The minority agrees with the thrust of the amendment.

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

The amendment (No. 1609) was agreed to.

Mr. WALLOP. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. WIRTH. Mr. President, I would like to engage the distinguished floor manager in a colloquy concerning the meaning of a term used in the vehicular natural gas, or VNG, provisions of S. 2166. The purpose of these provisions is to promote the development of a retail distribution infrastructure for VNG by eliminating regulatory disincentives for participation by existing natural gas distributors and automotive fuel marketers.

Mr. President, my question concerns section 11108 of 2166. Among other things, this section amends section 2 of the Natural Gas Act to define the term "Vehicular Natural Gas". This is defined to mean "natural gas that is ultimately used as fuel in a motor vehicle." I ask the floor manager to explain what is meant by the term "motor vehicle" in the definition of "Vehicular Natural Gas." In particular, I want to make sure that the term is not limited to cars, trucks and buses, but that it includes all self-propelled vehicles including, for example, locomotives and self-propelled construction equipment.

Mr. JOHNSTON. I would be pleased to respond to the question of the Senator from Colorado. With respect to the identical provision in S. 1220, the Committee on Energy and Natural Resources in its report noted that "[i]t is intended that the term 'motor vehicle' be construed broadly to include both vehicles now technologically capable of fueling with natural gas, such as automobiles, trucks, boats and trains, as well as other vehicles that may become technologically capable of fueling with natural gas in the future." The committee's reference to boats and trains, I believe, evidences an intention that the term "motor vehicle" be broader than simply on-road vehicles. To put it quite simply, if it has a motor that is fueled with natural gas, and if that motor can propel it somewhere, it is a "motor vehicle" for purposes of the definition of "Vehicular Natural Gas" in section 11108 of S. 2166, and the use of natural gas for such vehicles is contemplated by this section.

Mr. WIRTH. Mr. President, I thank the floor manager for his clarification.

ENERGY SMARTS: CHILDREN BUILDING POWERPLANTS

Mr. HATFIELD. Mr. President, as the Senate concludes consideration of the national energy strategy legislation I want to share with my colleagues an inspiring program in Oregon which transcends much of the rhetoric we heard this week, and which combines energy and the environment with our national education goals to improve mathematics and science literacy. I hope this story will motivate others to inquire within their own communities about ways to promote these mutual societal objectives.

Before I outline the details of this innovative and truly comprehensive effort, I want to say that in Oregon we do follow national politics. We do read the national newspapers. We are aware of the conventional thinking that says: "The war is over we don't need a national energy policy * * * that you can't pass a national energy bill without nightly news stories about gasoline lines * * * and that energy and the environment have lost their popular appeal because of concern over jobs."

But what I am here to report is that, at least in my State, concern over energy and the environment has not receded as a public concern, rather it simply has taken on a new form.

The people I know who are concerned about energy use and the environment don't often read the New York Times. They never come to the Hill to lobby on energy issues and they are almost never surveyed for their views on the subject. These people don't often worry about how much energy is going to cost, because they don't make any money.

But, Mr. President, what these people think about energy and the environment will make all the difference in the world—because these people are our children.

Throughout the past decade children of America have expressed a growing concern about the health of our planet and consistently have linked their concerns to energy use in our society. The success of community recycling efforts—led in large part by children—taught us an important lesson—that children are willing to change their behavior in order to achieve a long-term and admittedly ethereal social policy objective. Those who say today's kids are materialistic and self indulgent are wrong. Which is the heart of my story, Mr. President.

Could this kind of adolescent altruism apply to energy use? Could a new school curriculum be developed that would teach kids about wise energy consumption and environmental tradeoffs?

Could kids be motivated enough to build a powerplant out of energy conservation? Could the utilities in my State lead the way to regional collaboration in a critical area of education—mathematics and science?

These are the kinds of questions that have caused a minor revolution in Oregon. With the assistance of the Bonneville Power Administration and others, one electric utility in my State—Portland General Electric Co.—has been asking these questions and has developed a consensus of answers from the energy community in the northwest region. The effort has caught the attention of both the energy industry and educators alike.

The program is called Energy Smarts. And their motto is quite appropriate, "Kids + Schools = Power." The program has several separate but interrelated components and includes materials for grade levels K through 12. Originally the program was conceived to help school districts cut operating costs by conducting expanded energy facility audits, installing state-of-the-art energy efficient equipment, and providing operation and maintenance training. By reducing energy bills 15 to 30 percent the schools would save $15 to $20 million by 1996-97 school year which would then be available for other educational expenses. In Oregon, energy operating costs account for the second largest school expenditure after teacher salaries.

While the energy efficiency upgrades would provide a kind of working laboratory for many school children, the heart of the Energy Smarts Program is the portion designed for eighth graders, called "In Concert With the Environment." In Concert With the Environment integrates the concept of eco-watts as a means of teaching students how lifestyles and consumption are reflected in energy use and conservation. Every time you get in the car you consume an eco-watt. Every time you turn on a light switch you use up an eco-watt. Every time you buy a gasoline lawn mower or electric appliance you are making a choice about what kind of energy you want to consume and which environmental tradeoffs you believe are important. In the Energy Smarts Program, the term eco-watt is entirely fuel-blind.

Mr. President, the curriculum for this program contains many wonderful examples of energy education: If a family chooses to recycle all of their newspapers, it would reduce 21 cubic feet of needed landfill; it would save over 3,000 gallons of water plus the electrical energy saved, and it would remove the equivalent volume of CO_2 emissions as four mature trees.

There is yet another element of the In Concert With the Environment Program for eighth grade students. At the end of this 6-week curriculum, students will be sufficiently versed in energy supply and consumption that—with the help of their parents—they will conduct their own home energy and environmental audits. The utilities will use the information in the audit to evaluate the actual improvements in energy efficiency made by that family. Actions taken by the family are linked to energy conservation tariffs which allow participating utilities to accrue a 12-percent return on their investment in the equipment and materials used to develop the program. The expressed goal of Energy Smarts is for eighth graders over a 5-year period to build a 15MW powerplant from the energy conserved under this approach.

Mr. President, the energy and environmental benefits are obvious but what has caught the imagination of educators in Oregon is the opportunity for the Energy Smarts curriculum to also develop important analytical skills in math and science and to promote parental involvement in the educational process.

The Northeast Regional Educational Laboratory, 1 of 10 Federal educational laboratories across the country, is now taking a lead role in assembling the infrastructure to support the regional collaboration initiated under Energy Smarts. Through the Excellence in Science, Mathematics and Engineering Education Act of 1990, enacted last year, Federal funds will soon be available to regions like the Northwest to develop consortia of education and science resources to provide technical assistance for schools and teachers engaged in the educational reform process. Such assistance may provide assessment of student achievement in programs like Energy Smarts.

As we all know, collaboration on educational reform cannot come soon enough. I was dismayed to find yet another international comparison of our schoolchildren on the front pages on this morning's papers. The Secretary of Education, Lamar Alexander, termed the new data as a clear warning that even good schools are not properly preparing children for world competition.

The results are frightening, although I must say, literally numbing by now. The average American 13-year-old scored 55 percent out of 100 on the math test administered in 6,000 classrooms worldwide. By comparison, students in Korea scored 18 percent higher. Our students fared a bit better in science with the average score resting at 67 percent, 11 points below the top-scoring countries. But most distressingly, American students ranked behind those in the Soviet Union, Italy, Israel, France, Scotland, and Spain.

Mr. President, I strongly believe the Energy Smarts Program can serve as a model for reform. Currently, it is administered as a demonstation project in 23 schools within both Portland General Electric and Northwest Natural Gas service territory. Through the efforts of the Bonneville Power Administration, Pacific Power and Light, and the Northwest Natural Gas Co. the curriculum may soon be implemented regionwide.

At the same time as the participating students and school administrators of the Energy Smarts Program are building their 15-megawatt powerplant out of conservation, schools will be saving money; environmental benefits will be accruing and we will be shaping the behavioral patterns of these children for the rest of their adult lives.

It is not enough for children to simply be aware and concerned about the problems of the environment. The Energy Smarts Program will fill in the missing pieces by arming them with the conceptual tools to make wise choices about energy consumption. It will teach them that we can not eliminate environmental impacts entirely, but that we can minimize environmental impacts and that we have choices to make about which environmental values are most important. This concept of environmental choices, I believe, has been lost in much of our debate over national energy policy.

The second broader benefit, Mr. President, is that the Energy Smarts Program supports our national mandate to improve mathematics and science literacy by providing classroom activities that children can also do at home with their parents. The marriage of math and science literacy with real world experiences about environmental choices is a powerful combination that is embodied within the same Energy Smarts Program.

The Energy Smarts Program is truly an ingenious combination of elements that are all converging at the same time: Rate tariffs that treat energy conservation like other supply options; improved energy efficient equipment; budget cut backs within local school districts. This is why the Energy Smarts Program has enjoyed the strong support and participation of the Oregon Department of Education, the Oregon Department of Energy, the Public Utility Commission, the Northwest Power Planning Council, the Northwest Regional Educational Laboratory, the Bonneville Power Administration, Battelle Pacific Northwest Laboratories, the Environmental Protection Agency, as well as Portland General Electric, Pacific Power and Light, and Northwest Natural Gas.

But the truly unique aspect of Energy Smarts is that under the same umbrella we will be arming our children with both the conceptual and analytical tools to develop long term behavioral changes which will help reconcile the environmental consequences of our energy dependent society.

Mr. President, I ask unanimous consent that the article from this morning's Washington Post regarding international comparisons in mathematics and science education be included in the RECORD following my remarks.

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

STUDENTS TEST BELOW AVERAGE

(By Mary Jordan)

A new international comparison of schoolchildren shows American students performing below average in mathematics and science, a "clear warning" that even good schools are not properly preparing students for world competition, Education Secretary Lamar Alexander said yesterday.

The survey of 175,000 students worldwide, which Alexander called "the best international comparison of student abilities in 25 years," also shows American students watching more television and doing less homework than almost all of their counterparts around the world.

Alexander noted that the results show that the top 10 percent of American students "can compete with the best students in any country."

However, he said, the results also show that the vast majority of American students perform below the international average.

"It means this is not just an inner-city problem or a rural poverty problem," he said. "It's a problem in the suburbs and in the middle-class families all over the country."

Education officials said the $2 million study was designed to answer criticisms of past international comparisons. It tested 9-year-olds in 14 countries and 13-year-olds in 20 countries. Notably missing from the list are Japan and Germany, which declined to participate in the survey funded by the Education Department, the National Science Foundation and the Carnegie Foundation.

The average American 13-year-old scored 55 percent out of 100 on the math test administered last March in 6,000 classrooms worldwide. By comparison, Taiwanese and Korean students scored 18 percentage points higher. In science, 13-year-olds in America fared better, scoring an average of 67 percent, 11 points below the leaders.

The brightest news for the United States were the science scores of 9-year-olds, who performed only behind Korea and Taiwan and only by 3 percentage points. The Educational Testing Service, which administered the test, said the survey suggests American students fell behind as they got older and began being tested on more complicated sciences, like chemistry.

The survey appeared to challenge some notions about what leads to academic success. Small class size, a longer school year, and more money spent on books, computers, and teachers did not make a notable difference in student achievement, according to the survey.

Korea, which along with Taiwan scored at the top, had 49 students in an average class, the largest of any country. Hungarian students scored in the top half in math and science, but go to school only 177 days, about the same as Americans and near the bottom of those surveyed. The United States is at or near the top on dollars spent per student.

The study did suggest, however, a correlation between achievement and time spent watching television, doing homework, and reading.

In the United States, 22 percent of the 13-year-olds tested in science watched at least five hours of television a day. In Korea, the top performer, 10 percent watched at least five hours a day; in Taiwan and Switzerland, also at the top, 7 percent watched that much TV.

"This suggests that within all of those countries, the more time students spend watching television, the less well they do in science," said Archie E. Lapointe, one of the study's authors.

On the average, American 13-year-olds spend, at most, an hour a week on math homework and the same on science. Chinese students spend at least four times that on math and Russians study science at home for at least four times that on math and Russians study science at home for at least four hours a week.

Previous international comparisons have been criticized for including too few countries, not accounting for curriculum differences—such as what year students in different countries learn geometry—and because only a small percentage of students attend school in some countries, effectively comparing a cross-section of American students with the elite of another country.

Iris C. Rotberg, a senior social scientist at the Rand Corp. on a leave of absence from the National Science Foundation, said she believes many of those flaws remain in the new study.

"The practicality of making comparisons across diverse societies and educational systems make it difficult to interpret the findings." She noted that "only elite schools and regions were sampled" in some countries.

"There are different curriculum emphases in different countries and the test results could reflect those," she said. "We make policy based on these findings and the findings could be misleading because of technical glitches on these tests."

In the survey of 13-year-olds, Britain, China, Portugal, Brazil and Mozambique had a low participation rate, so they were not included in the main ranking. Of the 15 countries where a large percentage of students were included, Jordan was the only country to rank below the United States in math. Ireland and Jordan were the only countries whose students had worse scores in science.

Among the countries whose students performed better than those in the United States: the former Soviet Union (Russian-speaking students in 14 republics surveyed) Italy, Israel (Hebrew-speaking schools tested only), France, Scotland and Spain.

MANDATED OPEN-ACCESS

Mr. SHELBY. Mr. President, my friend the chairman of the Energy Committee and Senator RIEGLE have entered into colloquy in which they have addressed the question of transmission access and whether it should be mandated in the electric utility industry. And I would like to add my views on that subject at this time. As we all know, neither the Senate Energy Committee nor the Senate as a whole, has had the opportunity to consider fully the need for or ramifications of mandating open access to the Nation's electric grid.

In fact, in Committee, we specifically decided not to take up the issue of transmission access because: First, greater access could prove destructive and unfair; second, developing comprehensive legislation to deal with the case-by-case problems that arise in a transmission access dispute is inordinately difficult; third, greater access may evolve naturally as we make changes in the Holding Company Act, and, fourth, the administration itself did not include transmission access in its national energy strategy proposal.

Now, for those who may have questions about transmission access, I want to take a moment to address the question of whether or not we need to make any additional changes in the law to require open-access to the Nation's electric grid. The theoretical objective of forced opening of the electric power transmission grid is to encourage competition, thereby stimulating production efficiency and creating a more efficient bulk power market. A good case can be made for using competition to stimulate production efficiency, but if such competition were to impair the viability of the power grid, we might lose all the perceived advantages and more. Moreover, there is no conclusive evidence that market efficiency would be improved significantly if the grid were opened up. There appears to be little room for improvement in the short-term market, and I fear that proposals to open up the system may impair rather than improve long-term market efficiency.

The fact is that, aside from the investors in independent power production projects, society as a whole has little to gain or lose from the success or failure of any particular independent power generation enterprise. The stakes are much higher when it comes to an infrastructure industry such as the electric utility industry. Other businesses and all individuals depend on a reliable and economical supply of electricity; thus, society as a whole has a genuine interest in reliable and economic electric power. This fact has long been recognized in electric utility laws and regulations. Let us not disturb this equilibrium.

The electric power generating and transmission system is a vital national asset. It furnishes a blanket of broad public services that are available to everyone connected thereto. However, the grid is vulnerable. It is at the mercy of every system it serves. A mistake on the grid can cause widespread damage, as happened in 1965 when a series of errors in Canada followed by an unsustainable rush of power into upstate New York caused the blackout of New York City. When these large-scale outages occur, the impact on cities and communities can be dramatic. On January 6 of this year, an outage occurred here that blacked out portions of the District. Offices closed, traffic flow was disrupted, and hundreds of businesses lost thousands of dollars in trade. The reliability of our Nation's power system is central to our Nation's economy and, thus, we should be very careful about any changes we make in that system.

One of the significant unanswered questions in the current debate is who would provide the backup power to maintain system reliability under a system characterized by many independent producers freely moving electric power over circuits with a finite capacity. Another significant unanswered question is who will pay for the

construction of new transmission circuits and the expansion of existing ones necessary to make the proposed system work?

Under many current proposals, FERC would have the authority to mandate wheeling, and would continue to have the authority to set rates charged for the service. However, it is very likely that these rates would be set at a level to allow the expansion of service necessary to accommodate the large-scale movement of bulk power. Since construction and maintenance of transmission facilities are part of the utilities' cost of operation, increases in these costs would likely be reflected in retail electric rates.

In addition, transmission circuits are a bounded resource with a fixed capability to move bulk power. Should this capacity be snatched-up by FERC-mandated transmission of independently produced power to large customers, smaller retail utility customers unable to shop for lower cost power would be stripped of the savings now acquired through voluntary sales and interchanges. The collective impact of present transmission-access and PUHCA proposals upon regulated utilities and their customers would be serious. Utilities could face spiraling costs and significant losses of revenue, while the price of electricity could increase to most customers and reliability of service deteriorate.

Transmission capacity shortages are real. Moreover, those shortages would almost certainly be aggravated if mandatory open access proposals now under discussion are embraced. This is because the grid was not planned to accommodate the immense power flows that might occur if we try to level regional differences in retail rates through open access.

In most parts of the country, the transmission system is being fully utilized. I strongly believe that the reliability and economic interests of a utility's own customers should not be harmed because the utility is ordered to provide transmission services for others. The local ratepayers who support the cost of construction and operation of the transmission network must be held harmless. Put another way, the local ratepayer should be indifferent to whether or not their utility company is forced to make the transmission system available to others. Under most transmission schemes, the local ratepayers, in the end, would be forced to subsidize the incremental cost of forced transmission access. I ask you, would this serve the public good, or would we be sacrificing the public good by subsidizing a special interest?

The stated mission of mandatory open access is to equip a more efficient market, one in which the least-cost sources of generation are used to meet system loads. However, we already have a extremely efficient bulk power market. It is by no means clear that forced opening of the electric transmission grid will improve market efficiency—especially if the newly unbundled transmission services are not priced in a fair manner.

Moreover, mandatory open access may impede cooperative system planning and maintenance scheduling to such a degree that the long-run efficiencies that are now being achieved will be significantly impaired. Said another way, should the House proposal be enacted, for instance, it would fundamentally alter the present system for producing and delivering electrical power, increasing the rates to most residences and small businesses, decreasing the reliability of the electrical transmission network and threatening the economic stability of many regulated utility companies.

Thus, to repeat, I strongly endorse the chairman's view that we ought to leave the current system for providing transmission access in place and make no changes that would work harm on native load electric ratepayers across the country. I urge the conference to heed the warning that transmission access proposals like those currently being considered in the House would not protect the interests of those customers. Instead of enacting legislation, we simply need to continue to encourage voluntary, economically sound transmission transactions.

INDUSTRIAL ENERGY EFFICIENCY AMENDMENTS

Mr. GORE. Mr. President, I have submitted three amendments that, taken together, will help our industries become more competitive. The industrial sector uses 36 percent of all energy consumed in the United States—more than the combined residential and commercial sector—and 33 percent more than the transportation sector. Improved energy efficiency in industry is critical to the success of energy policy.

But according to the last Annual Energy Outlook published by the Energy Information Administration, industrial energy intensity—the amount of energy used to create a dollar of industrial output—has actually risen during the late 1980's. Thus, industry as a whole is becoming less energy efficient. Another recent EIA report that focused on manufacturing has shown that in that sector, energy efficiency gains have almost come to a complete halt after 1985. While improvements averaged 5.2 percent per year between 1980 and 1985, efficiency only increased by 1.5 percent per year between 1985 and 1988.

This is not good news for our ability to compete internationally. Recent OECD data tell a very disturbing story. Between 1980 and 1985, the United States outpaced both Germany and Japan in the rate of industrial energy efficiency gains. But between 1985 and 1988, however, the rankings reverse. Not only are our major trade competitors more energy efficient than we are, they are now progressing more rapidly toward increased energy efficiency in the key industrial sectors.

We know the main reason why gains in energy efficiency peaked in the mid 1980's: Energy prices tumbled. But lower energy prices are both a blessing and a curse. In the short run, they can help reduce production costs and help industry. But when low energy prices sap our resolve to pursue conservation, when they divert our attention away from investments in energy efficiency, they do not help strengthen the economy. In the long run, we have to pay the piper—or perhaps in this case the pipeline. We must act now to reinvigorate our pursuit of industrial energy efficiency.

Some of our industries have tried to be out in front—to cut their energy costs and improve the efficiency of their energy use. But their effort is not always easy. Often their initiative is blocked by institutional barriers, a lack of key information or expertise, or simply a lack of awareness of important energy conservation opportunities. My amendments are designed to overcome these barriers and to help ensure that our industries are on the cutting edge.

ENERGY ANALYSIS AND DIAGNOSTIC CENTERS

One relatively untapped reservoir of economic strength in this country is the talent of bright young technical students who need practical hands-on experience. Changes in the market will bring new challenges in the 1990's. More than ever, our technical students would like to work in areas that protect our environment and enhance our competitiveness. More than ever, small and medium-sized firms are competing internationally, where energy costs can make the difference between success and failure.

The time is right to unleash a generation of bright, young engineers into the world of industrial energy management. The amendment that I am offering will build upon the success of a program that I am proud to say originated at the University of Tennessee in 1976. The program sponsors participating universities to provide senior and graduate engineering students to perform energy audits for small- and medium-sized commercial and industrial facilities. The audits assist the managers of these enterprises to trim their energy needs and reduce their energy costs. The students benefit from these programs. Our entrepreneurs benefit from this program. And our economy benefits from this program.

The potential of this program is truly vast. Already, even in the small effort that is now underway, students have identified over $625 million in energy cost savings for manufacturers. The average savings identified per firm

was about $43,500 per year. This is not a trivial amount to a small manufacturing facility.

GRANTS FOR INDUSTRIAL ENERGY ASSISTANCE

The second amendment I am offering today encourages electric and gas utilities to provide energy efficiency technology assistance to industrial customers. I am joined in this initiative by my distinguished colleagues, Senator METZENBAUM and Senator JEFFORDS, and I would like to acknowledge the work of our colleagues in the other body, Congressmen WOLPE and MARKEY, who introduced a very similar measure in the House of Representatives earlier this week.

Utility demand side management programs have focused on residential and commercial customers because the technologies are fairly standard, such as lighting, hot water heating, space heating, and air-conditioning.

But most energy in the industrial sector is consumed in the production process itself; processes that can be as diverse as chemical plant or a textile mill. Some gas and electric utilities provide technical assistance to the largest industrial customers because they compete for energy sales and want to attract large customers to their service territories. But small- and medium-size manufacturers are often not wooed in such fashion, since utilities cannot typically receive a rate of return on these programs. Moreover, utilities have sometimes lacked sufficient qualified personnel to assist all of their industrial clients.

This program addresses these needs by offering grants to States that adopt least cost planning programs. These grants would fund industrial technology commercialization and energy assistance training programs, which would help bring the best technology and talent to manufacturing firms.

This program could work hand-in-glove with the university energy analysis and diagnostic center program. By simultaneously involving utilities, universities, students, and industrial energy consumers, the two programs will help enhance the market for talent and technology.

COOPERATIVE ADVANCED APPLIANCE DEVELOPMENT

New household appliances have steadily become more energy efficient through manufacturing and design improvements, often spurred by Federal efficiency standards. Consumer acceptance is often enhanced through utility programs that give rebates to customers who purchase the most efficient appliances on the market. While these developments have been very important in increasing residential energy efficiency, much more can, and must, be accomplished.

One of the fundamental barriers to commercialization of more efficient appliances equipment is the unknown demand. Manufacturers have little incentive to develop appliances that exceed Federal efficiency standards. While utilities might value that extra efficiency as a way to defer expensive capacity expansion, they have no way of signaling to the manufacturers what they might be willing to pay for super efficient appliances.

Until now. The amendment I am offering will lay the groundwork for a program that will foster competition among manufacturers of super efficient household appliances and industrial machines. The goal is to have appliance manufacturers compete on the basis of energy efficiency, and guarantee a market for the winning product design or prototype.

This program will increase efficiency; reduce our emissions of greenhouse gases; improve our manufacturing competitiveness, encourage more efficient utilization of utility capacity, reduce our electricity bills, and decrease our oil imports.

The Federal Government has an important role to play in catalyzing the commercialization of these new super-efficient technologies. The amendment that I am sponsoring will require the Secretary of Energy to explore what role DOE might play in moving cutting edge appliances into the market. Through consultation with other agencies, the Secretary will also examine how other agencies could engage the private sector. For example, Federal housing authorities could encourage maximum efficiency through their appliance purchases.

Mr. President, I believe that these amendments offer positive solutions to our lagging efforts in industrial energy efficiency. They build on success, they reward the best, they develop talent, and they help our manufacturing industries compete in the global arena. I urge the Senate to join me in adopting them.

HYDROPOWER PROVISIONS OF S. 2166

Mr. CHAFEE. Mr. President, during the Senate debate last fall regarding the original National Energy Security Act, I outlined a number of my concerns with the bill, including the hydropower provisions of title V. I rise today to thank my colleagues Senators JOHNSTON and WALLOP and the other members of the Energy Committee for their efforts to resolve these concerns. I also want to extend my appreciation to Senators ADAMS and WELLSTONE who lead the effort to ensure that the hydropower licensing process was not modified in a way which would preclude the full consideration of environmental issues. Senators CRANSTON, LEVIN, WIRTH, LUGAR, JEFFORDS, and DURENBERGER also supported this important effort.

The amendment as agreed to by the Energy Committee would delete the provision of S. 2166 which would eliminate Federal licensing jurisdiction over hydroelectric power projects of 5,000 megawatts capacity or less, turning that authority over to the States. This would have created a hodgepodge of confusing requirements and effectively removed two-thirds of hydroelectric projects from the NEPA process. Therefore, I fully support deleting this provision.

In addition, the amendment would delete the provision of S. 2166 which would have eliminated the authority of Federal land management agencies to set mandatory conditions on hydrower licenses for the protection of lands within their jurisdiction. The amendment would require, in the alternative, that the Federal land management agencies enter into memorandums of understanding with FERC to eliminate unnecessary delay and duplication and to provide for the resolution of any disputes between the agencies. This will ensure that the Federal land management agencies can fulfill their reponsibilities to protect the lands within their jurisdiction and at the same time improve the efficiency of the hydropower licensing process.

Mr. JOHNSTON. Mr. President, I say to the Senator from Minnesota, I am prepared to do the unanimous-consent request. Is he ready for us to proceed at this point?

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, at this time the Senator from Minnesota would still like to put forward a modification of the unanimous-consent agreement.

Mr. JOHNSTON. Well, Mr. President, if the Senator will yield I will state the request, and then we can discuss the Senator's reservation.

Mr. WELLSTONE. I would be happy to.

UNANIMOUS-CONSENT AGREEMENT

Mr. JOHNSTON. Mr. President, I ask unanimous consent that at 10 a.m. on Tuesday, February 18, the Senate resume consideration of S. 2166, the energy bill, and that at that time Senator MURKOWSKI be recognized to offer his amendment relative to the Alaskan Wildlife Refuge; that there be 4 hours for debate prior to a motion to table the amendment, equally divided in the usual form; that no amendments to the amendment be in order prior to the tabling motion.

Mr. President, I further ask unanimous consent that the only amendments remaining in order to S. 2166, with the exception of the Murkowski amendment regarding ANWR, be the following first-degree amendments, and that the listed first-degree amendments be subject to relevant second-degree amendments, and that no CAFE amendment be in order either as a first- or second-degree amendment, and the amendments be as follows:

By Senator BIDEN on nuclear safety.

By Senator BIDEN on the Nuclear Safety Board.

By Senator BRYAN on Public Utility Holding Company Act reform, hereinafter called PUHCA.

By Senator DECONCINI on petroleum.

By Senator EXON on strategic diversification.

By Senator EXON on NRC annual fees.

By Senator FOWLER on PUHCA.

By Senator FOWLER on solar bank.

By Senator GLENN on Government contractors.

By Senator GLENN on Federal energy audit teams.

By Senators GRAHAM and MACK to strike 1, 2, and 3 OCS provision and exempt New Jersey and California.

By Senator GRAHAM, the substance of S. 736, to amend this bill with provisions which would make lease cancellation easier to accomplish and give the States veto power of the Outer Continental Shelf program.

By Senator GORE on industrial reporting,

Two amendments by Senator JOHNSTON, which are relevant to PUHCA, and pertain neither to CAFE and ANWR.

An amendment by Senator KERRY relative to OSC activity.

An amendment by Senator LAUTENBERG relative to hydroelectric dams.

By Senator LAUTENBERG relative to National Environmental Policy Act natural gas provisions.

By Senator LEVIN to insure nondiscrimination on the procurement of alternative fuels.

By Senator METZENBAUM regarding natural gas refund provisions.

By Senator METZENBAUM, antitrust provisions with respect to nuclear enrichment activities.

By Senator METZENBAUM on antitrust.

By Senator METZENBAUM on Ohio hydro.

By Senator RIEGLE on the limits of participation by companies.

By Senator RIEGLE on Public Utility Holding Company Act books and records.

By Senator RIEGLE on alternative fuels.

By Senator RIEGLE on environmental restoration.

By Senator ROBB on the sense-of-the-Senate on the gasoline tax on conservation. That was just adopted, so I take off Senator ROBB.

By Senator SANFORD on PUHCA.

By Senator WELLSTONE on sustainable energy transition pilot program.

By Senator WELLSTONE on energy funding priorities.

By Senator WELLSTONE on striking contracting authority.

We have just dealt with Senator WELLSTONE on striking hydro projects exemptions under 5 megawatts, so I take that off.

By Senator WIRTH on building standards.

By Senator WIRTH on environmental externalities test.

Provided further that if Senator MURKOWSKI'S ANWR amendment is not tabled, then this consent agreement is vitiated.

Mr. FORD. Mr. President, reserving the right to object, and I will not object, Senator WIRTH'S amendment on externalities test, I think he withdrew that earlier.

Mr. JOHNSTON. I believe that is correct. So I would amend the request by striking Senator WIRTH'S amendment on environmental externalities.

Mr. FORD. I thank the chairman.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, I believe that the chairman intended for me to read the list of Republican amendments that would be included in this unanimous-consent request.

Mr. JOHNSTON. That is correct, Mr. President, and part of my unanimous-consent request would be the list to be read now by the Senator from Wyoming.

The PRESIDING OFFICER. Before we proceed, the Chair would advise the managers of the bill that one of the measures that you listed for consideration, the strategic diversification, was passed a few minutes ago and it may be stricken from the list as you incorporated in your unanimous consent.

Mr. JOHNSTON. That is by Senator EXON on strategic diversification.

Mr. President, I amend the request by striking Senator EXON'S amendment on strategic diversification.

Mr. WALLOP. Mr. President, the Republican list of amendments:

By Senator GORTON on OCS leasing off Washington.

Senator CRAIG on eminent domain.

Senator CHAFEE on NEPA.

Senator CHAFEE on strike HCFC R&D.

Senator CHAFEE on hydro cost sharing.

Senator CHAFEE on hydro construction projects, strikes that.

Senator CHAFEE on coal ash study, strike.

Senator CHAFEE, hydro environmental criteria study.

Senator MURKOWSKI, ANWR, that is the ANWR. That is one that has been recognized and dealt with specifically and separately.

Senator MURKOWSKI on energy security.

Senator DOMENICI, R&D on natural gas.

Senator DOMENICI on solar vehicles.

Senator DOLE on DOE energy center in Kansas.

Senator DOLE on SPR stripper wells.

Senator DOLE, energy related, two amendments.

Senator KASTEN, two amendments on battery research.

Senator MCCAIN, a relevant amendment and one on indoor air pollution mitigation needs.

Senator MCCAIN, again on subject Congress to energy efficiency codes.

Senator MCCAIN, subject Congress to alternative fuel vehicle fleets.

Senator MCCAIN, subject Federal Government on waste minimization.

Senator MURKOWSKI on Canada/alternative fuels.

Senator NICKLES, PUHCA, oil and gas OG&E.

Senator NICKLES, PUHCA related.

Senator NICKLES, energy tax incentive provisions—sense-of-the-Senate.

Senator DANFORTH to strike OCS impact aid.

Senator HATCH, radiation exposure compensation.

Senator GRAMM, a PUHCA amendment.

Senator GRASSLEY, alternative fuels amendment.

Senator SPECTER, PUHCA amendment.

Senator MACK, OCS.

Senator MACK, a PUCHA amendment.

Senator BROWN on department leveraging.

Senator JEFFORDS, title VI of the Industrial Energy Efficiency Technology Act.

Two to the ranking member, Senator WALLOP, relevant to the bill, PUHCA, not CAFE or ANWR related.

Mr. JOHNSTON. Mr. President, I ask further to amend the request by adding an amendment by Senator BENTSEN relative to PUHCA, foreign ownership, and by striking the two Lautenberg amendments, hydroelectric dams and NEPA natural gas that already have been dealth with.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, reserving the right to object, I have a modification that I would like to suggest an UC agreement if I may, and it may be needed to be reworded. Will the chairman let me read it and then convey the sense of this? And this shall be the only occasion on which any amendment or measure relating to ANWR shall be considered this year in connection with any economic recovery or jobs measure.

What I am really trying to get at here is I understand what the Senators from Alaska have requested, and I think that if we have an up-or-down vote, that is fine. I would like to get a commitment that the ANWR measure not be attached to an economic recovery bill or jobs bill. I would like to have that assurance in this UC agreement. It seems to me that quite reasonable.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, the two Alaskan Senators are not here. They have asked for the right to bring this up. I am sure we could not have

any unanimous consent with respect to that and I would tell the Senator that he is not really being given anything on ANWR other than—I mean if the two Senators from Alaska where here they could at any time bring up the ANWR matter and we could move to table. So they are really not getting other than they left town and they wanted to be protected.

I would submit that the opponents to ANWR are getting a great deal. They are getting a right to table, and that if that fails then the whole thing is opened up. We are trying to get this bill wrapped up. We are not trying to get any advantage for ANWR at all. And I would tell the Senator if he objects on that ground then we are just going to be here a lot longer and unnecessarily so, and without getting any advantage for the Alaskan Senators on ANWR.

Mr. WELLSTONE. Mr. President, first of all, let me just say that I have heard plenty of discussion around here that there will be a strategy to attach the ANWR measure onto an economic recovery bill or jobs bill, which I think would be highly inappropriate given the kind of economic pain that cuts across a very broad section of the population in this country.

Those of us that were involved in the filibuster have worked very hard with the Senator from Louisiana, who has been very fair. I think we had an agreement. We went along with it. There was no filibuster. Personally, I had hoped that we would deal with ANWR at the very beginning. I did not want it to come after all these other amendments. I did not want it to come at the end.

The Senator from Louisiana has been very fair. And my questioning about this whole process and where we are going right now has nothing to do with the way in which he has bargained, which has been in good faith. But I am concerned about all of this discussion that I have been hearing, and it seems to me that the proponents of ANWR have had their request granted. I mean, they will get this vote. It will be an up-or-down vote.

Mr. JOHNSTON. No.

Mr. WELLSTONE. That is right. I am sorry. We will have a vote as to whether or not we will table it. We will then know where the Senate stands. And to my mind, that is the vote.

And so what I am saying is I will agree to this; I will sign off on this agreement if I get some assurance that this will be the only time ANWR will be brought up—or, I am sorry—if I get some assurance that ANWR will not be brought up and attached to any economic recovery or jobs bill, which is what I think has to be the focus of this Senate.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, the Senator understands that the Senators from Alaska are not here, and the unanimous consent can therefore not be agreed to without them here. I and everyone else who earlier voted for ANWR—we just simply could not approve this.

So then what we would do, when they finally come back the week after the recess, they would bring up ANWR. It might take longer than 4 hours to debate it. The motion to table would be made and granted. Then, at that point, what is the Senator going to do? Refuse to consider the bill unless they agree not to bring up ANWR again? I mean, are you going to do that on every piece of legislation, so you are not going to let anything pass in the Senate until and unless all Senators agree that ANWR cannot be taken up? I think not.

I wish the Senator would reconsider that. Are we going to do the same thing with CAFE? Are we going to do the same thing with other bills? The rules of the Senate provide for amendments. I do not think ANWR will be brought up again, because I think if it is voted here, it would be defeated decisively.

First of all, you cannot do it tonight because those Senators are not here and we are trying to finish this bill. We have been here on the floor for almost 12 hours solid. We want to work tomorrow. We are trying to be fair with everybody.

I submit that that kind of request is really—maybe it has been attached to some unanimous consent at some time, but I do not know when it was. And certainly, it makes this agreement impossible.

Mr. WELLSTONE. Mr. President, the reason that I suggest this modification on this bill is because we have been spending a long time, and I think had very good and reasonable negotiations about this bill, this energy bill. And now we are going to have this vote on whether or not to table ANWR. And that seems to me to be the appropriate thing to do.

But I am very concerned about this ANWR amendment being attached to an economic recovery bill and jobs bill, which I think is just playing politics with a very serious issue.

In response to what the Senator from Louisiana said as to whether or not such modifications have been suggested in the past, I cannot answer that question because I am a freshman Senator. But What I do know is the two Senators from Alaska are not here. I am here. Maybe we could call the Senators from Alaska and find out whether they would agree.

But at this point in time, without such a modification, Mr. President, I would object to this UC agreement.

The PRESIDING OFFICER. Objection is heard.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Will the Senator from Minnesota yield for a question or two?

Mr. WELLSTONE. Yes.

Mr. FORD. It is my understanding that the Senator from Minnesota has now objected to the unanimous-consent agreement.

Mr. WELLSTONE. Mr. President, the Senator from Kentucky is correct.

Mr. FORD. Mr. President, this is a difficult legislative process to have this as a unanimous consent of the Senate regardless of how we work it.

Would the Senator be amendable to submitting an amendment that says this? That is what you are going to have to do; that you must submit an amendment that has that language in it, we incorporate that in the unanimous-consent agreement as an amendment we will take up, and the Senate will vote on it. The Senate is either going to not vote now and put us in a long procedure, or we accept your amendment and be part of the unanimous-consent agreement, and at some point before the bill passed, we will vote up or down or on tabling the amendment that the Senator is suggesting.

The Senator is not going to get a unanimous consent agreement that ANWR will not be brought up on a jobs bill or anything else, but you might be able to secure one of the amendments that the manager of the bill will propound.

Would the Senator be interested in that?

Mr. WELLSTONE. Mr. President, I think this is a constructive suggestion or proposal by the Senator from Kentucky. I would like to be able to, at this point in time, again being a freshman Senator, rather than making a commitment right at this moment, I would like a little bit of time to deliberate about that and go over the wording of such an amendment.

But my objection still stands.

Mr. JOHNSTON. Mr. President, a unanimous consent is just that; it would take unanimous consent, and it blocks further consideration. The Alaskan Senators are not here.

Mr. FORD. Mr. President, if the Senator will yield to me.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Then he would just offer an amendment, like everybody else. You have some there that are relevant to the bill. And all he would have to do is submit an amendment and it would be part of this. You could not object to him doing that.

Then we could just defeat it when it comes up, or do what we have to do.

Mr. JOHNSTON. An amendment that says what?

Mr. FORD. That will be a part of it, that no further consideration of ANWR would be considered this year.

Mr. JOHNSTON. An amendment as part of the bill?

Mr. FORD. Yes; that is what I am saying.

Mr. WELLSTONE. Mr. President, will the Senator from Louisiana suggest the absence of a quorum, so we could discuss this for a moment?

Mr. JOHNSTON. 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.

Mr. JOHNSTON. Mr. President, I would like to amend the unanimous-consent request by adding an amendment by Senator BRYAN on industrial energy reporting.

The PRESIDING OFFICER. Without objection, it is so ordered. That it is so added to the unanimous-consent request.

Mr. JOHNSTON. And, also, the amendment that reads Graham-Mack should read Graham-Cranston, to strike sections 12-101 and 12-102, and we should add a Graham OCS amendment.

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

Mr. JOHNSTON. 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.

Mr. JOHNSTON. Mr. President, for the time being I withhold the unanimous-consent request and yield to the Senator from Minnesota.

Mr. WELLSTONE. Mr. President, we have been in consultation and discussion. And there does not seem to be any parliamentary direction to take here or anything that could be done that would be positive or helpful or that would meet some very real concerns that I have, in which case I certainly have no wish to hold up this bill. That was not my intention, and I want to make it clear for the record to the Senators from Alaska and to the chairman of the Energy Committee and the distinguished ranking minority member, Senator WALLOP, that that was not my intention.

My concern and the reason that I sought this modification is that in my heart of hearts—or maybe in my head—I am really worried that there will be this effort to attach ANWR onto an economic recovery or jobs bill. And I do not want to be in a position of filibustering an economic recovery bill or a jobs bill. And I do not want to be party to playing that kind of politics. I think that would be a most inappropriate move for any Senator or Senators to make. I hope we will have this vote on Tuesday when we come back. I hope we will have that vote and then it will be clear as to where the Senate stands.

It is certainly my fervent hope, I want to try to make this very clear tonight, that ANWR not be attached to any economic recovery bill or jobs bill. I think that would be unconscionable, and I suppose that tonight I am simply trying to make my objection loud and clear.

After having said that, Mr. President, I withdraw my objection, and I thank the Senators for their patience.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? If not, it is so ordered.

The text of the agreement is as follows:

Ordered, That at 10:00 a.m. on Tuesday, Feb. 18, 1992, the Senate resume consideration of S. 2166, the National Energy Security Bill, and that the Senator from Alaska (Mr. MURKOWSKI) be recognized to offer his ANWR amendment, on which there shall be 4 hours debate prior to a motion to table, to be equally divided and controlled in the usual form, with no amendment to the amendment to be in order prior to the motion to table.

Ordered further, That the only amendments remaining in order to S. 2166, the exception of the Murkowski amendment regarding ANWR, be the following first degree amendments, and that the listed first degree amendments be subject to relevant second degree amendments: *Provided*, That no CAFE amendment be in order as a first or second degree amendment.

Bentsen: PUHCA foreign ownership.
Biden: Nuclear safety.
Biden: Nuclear safety board.
Brown: Department leveraging.
Bryan: PUHCA.
Bryan: Industrial energy reporting.
Chafee: NEPA.
Chafee: HCFC R&D (strike).
Chafee: Hydro cost sharing.
Chafee: Hydro construction projects (strikes).
Chafee: Coal ash study (strikes).
Chafee: Hydro environmental criteria study.
Craig: Eminent domain.
Danforth: Strike OCS impact aid.
DeConcini: Petroleum.
Dole: DOE energy center, Kansas.
Dole: SPR-stripper wells.
Dole: Energy related.
Dole: Energy related.
Domenici: Natural gas R&D.
Domenici: Solar vehicles.
Exon: NRC annual fees.
Fowler: PUHCA.
Fowler: Solar bank.
Glenn: Government contractors.
Glenn: Federal energy audit teams.
Gorton: OCS leasing off Washington.
Graham/Cranston: Strike Sections 12101, and 12102.
Graham: S. 736, amend this bill with provisions (make lease cancellation easier to accomplish, give states veto power over OCS).
Graham: OCS.
Gore: Industrial reporting.
Gramm: PUHCA amendment.
Grassley: Alternative fuels amendment.
Jeffords: Title 6, industrial energy efficiency technology act.
Johnston: Relevant (not CAFE or ANWR).
Johnston: Relevant (not CAFE or ANWR).
Kasten: Battery research.
Kerry: OCS activities.
Levin: Insure non-discrimination procurement alt. fuels.
Mack: OCS.
Mack: PUHCA.
McCain: Relevant amendment.
McCain: Indoor air pollution mitigation needs.
McCain: Subject Congress to energy efficiency codes.
McCain: Subject Congress to alternatively-fueled vehicle fleets.
McCain: Subject federal gov't waste minimization.
Metzenbaum: Natural gas refund provisions.
Metzenbaum: Anti-trust nuclear.
Metzenbaum: Anti-trust.
Metzenbaum: Ohio hydro.
Murkowski: Canada/alternative fuels.
Murkowski: Energy security.
Murkowski: ANWR.
Nickles: PUHCA—OG&E.
Nickles: PUHCA related.
Nickles: Energy tax incentive provisions, sense of Senate.
Riegle: Limits on participation by companies.
Riegle: PUHCA—books and records.
Riegle: Alternative fuels.
Riegle: Environmental restoration.
Sanford: PUCHA.
Specter: PUHCA amendment.
Wallop: Relevant (not CAFE or ANWR).
Wallop: Relevant (not CAFE or ANWR).
Wellstone: Sustainable energy transition pilot program.
Wellstone: Energy funding priorities.
Wellstone: Strike contracting authority.
Wirth: Building standards.

Ordered further, That if the Murkowski ANWR amendment is not tabled, this unanimous consent agreement is vitiated.

Mr. JOHNSTON. Mr. President, I thank all Senators. Mr. President, this is a formidable list. However, we can work through this work, I think, fairly fast.

Mr. President, there will be a very busy day tomorrow. We have a Bryan motion, which I think is going to require a record vote. But I think probably tonight it would be difficult to get everyone back for that Bryan vote. I will leave that up to the majority leader.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The majority leader.

DOING THE SENATE'S WORK

Mr. MITCHELL. Mr. President, last night here on the floor I was criticized by the senior Senator from Pennsylvania because I made an earlier decision, which I reaffirmed last night, that the Senate not be in session next week except for pro forma meetings with no business transacted.

Tonight we confront the opposite situation. Although Senate schedule for at least the past 3 years has been that the Senate will be in session and voting on 5 days a week under certain limitations—not later than 7 p.m. on Tues-

days and Wednesdays and not later than 3 p.m. on Fridays—there has developed a practice under which Senators simply leave on Thursday afternoon, ask that they be protected, and, if enough leave, it becomes a self-fulfilling prophecy that the Senate cannot do anything on Thursday evening, the evening supposed to be the evening for work, and on Fridays, when the Senate is supposed to be in session and voting.

Just as I rejected the contention made last evening about next week, I reject the notion that we can tolerate this practice. This is a Thursday, and there have been only two votes today and they were prior to 4 p.m. this afternoon. This is not a partisan issue. This involves Senators regardless of party affiliation. It has become apparent that Senators now feel that all they have to do is leave and, if enough Senators are gone, then that creates a critical mass for inaction. And that, somehow, the distinguished Republican leader or I will protect the interests of those Senators who are not here.

I have pursued a policy of not utilizing procedural votes to ensure the presence of Senators. As a consequence of that policy, the number of votes cast in the Senate has declined significantly and the voting percentage records of Senators has increased to an all time high. But it seems to me apparent that I can no longer pursue that policy. It is obvious we are not going to have a vote this evening because as the managers know, as the distinguished Republican leader knows, and as I know, we have a large number of Senators on both sides who have simply gone.

There is no basis for a Senator to make commitments outside of the Senate on Thursdays and Fridays of a week in which the Senate is in session unless that Senator is prepared to miss whatever occurs on the Senate floor. That is a judgment each Senator can make. I have no quarrel with that; no Senator should have any quarrel with that. A Senator makes a judgment that some other activity—a meeting in his or her State, a visit for some other purpose—takes precedence over debate and vote on the Senate floor. This is not the only place in which a Senator works. A Senator works in his office and home State and in other areas of activity.

But what is unacceptable, what cannot continue is for Senators to expect to do that and have nothing transpire on the Senate floor because they are not here.

Therefore, I wish to now announce, unless otherwise specifically stated by me, following consultation with the Republican leader, there will henceforth be votes on every Friday when the Senate is in session. That does not include tomorrow because we are, frankly, stuck in a situation where a lot of Senators have just gone and they have not had this notice. But everybody has the notice now.

Unless it is specifically stated in advance, there will be votes on Fridays in which the Senate is in session. There will at least be one vote and there may well be several votes. If that is the only way that the presence of Senators can be assured, then that is the course of action we will pursue. We cannot tolerate a situation in which the Senate simply cannot transact business on those relatively few days when we are, in fact, in session.

Furthermore, I will, between now and when the Senate reconvenes on February 18, reconsider the policy of limiting votes prior to 7 p.m. on Tuesdays and Wednesdays when the Senate is in session.

We simply have to be in a position to conduct the Nation's business. We are now under great pressure to complete action by a time certain on a tax bill and economic recovery package. And yet what is occurring is we are being subjected to pressures that we have to get that done by a certain time, but we cannot be in session doing anything for, in a practical sense, other than meeting Tuesday afternoon and Thursday afternoon. So it is not going to be possible to transact the other business that is essential to permit us to complete action on the required economic recovery package. We are going to have to deal with the budget, a very important matter; we are going to have all of the appropriations bills and we could not possibly meet those requirements under these circumstances.

Mr. WALLOP. Will the leader yield for both an observation and a question?

Mr. MITCHELL. Yes certainly.

Mr. WALLOP. Mr. President, the observation is that Senator JOHNSTON and I, not unlike other managers of other bills that have gone before us, have spent literally hours waiting for somebody to offer an amendment. Perhaps the Senators might be more willing to offer the amendments if indeed the reward was going home by the stated hours on Tuesday and Wednesday. I certainly do not want to see us lose that privilege, but it is terribly frustrating to manage a bill and sit here and have everything but the business of the bill take place.

I do not know what the answer to it is. If I did I would pass it quickly to the majority leader, I assure him. It has been frustrating for the two of us. Though, I will say that we have conducted a lot of business that did not require rollcalls, our staffs have put together. I think we put maybe some 40 or 45 amendments through today.

Mr. MITCHELL. Indeed, I commend the managers for their diligent effort in the face of numerous interruptions for other matters, the unemployment insurance bill on Tuesday, debating other matters on other days. I believe they have acted on in excess of 40 amendments, although there has been only three rollcall votes this week on this bill. But the reality is we simply cannot permit to take hold that circumstance.

The Senator is quite right, here we have a situation where the list that has just been submitted, at least in its original draft form, had 70 amendments on it. I believe it is slightly less than that now. But here is a list, Senators saying they have 75 amendments they want to offer, but we cannot find a single Senator to come over here and offer an amendment.

Mr. WALLOP. If the leader will yield for one further observation. It would not become, I hope, the only measure of the performance of the Senate, the number of rollcalls we conduct, because we have crafted a lot of legislation in the other time, despite the fact only having had three rollcall votes. One of the things we have tried to do is avoid some of those simply by working hard to come to an accommodation with the philosophy of the bill.

Mr. MITCHELL. Mr. President, since I am the majority leader who has pursued a policy that has produced the lowest number of rollcall votes in 15 years, I wholeheartedly agree with the Senator's assertion. I do not want to assert that quality of work is related to the number of rollcall votes. Otherwise one can conclude that we have had the least successful Senate in many years because of the number of votes.

I have tried to reduce them and I tried very hard with, I must say, excellent cooperation from the Republican leader to try to accommodate as many Senators as possible to make it possible for Senators to meet the important commitments many of them have outside of the Senate. But we simply cannot continue as we have here this evening with, as I said, a large number of Senators on both sides just leaving. Then having gone, when they get to wherever they are going, calling back and saying to me and to the distinguished Republican leader, I am not there now, so protect me; make sure nothing happens.

That is a prescription for inaction and, of course, our obligation is to act in the national interest where necessary and appropriate.

Mr. JOHNSTON. Will the Senator yield?

Mr. MITCHELL. Yes.

Mr. JOHNSTON. Mr. President, with the leader's concurrence, Senator WALLOP and I propose to be here in the morning. We can work through a lot of these amendments. There is a tremendous amount of work that has to be done through staff even with those Senators who are gone. If their staff is here, if they can work through these amendments, that is the only way we can get these amendments done.

There will be no way to have a debate and vote on every one of these amendments. We would be here until Christmas time if we did that. I think most

Senators consider that we are going to work most of these out through staff. But I hope staff will not leave and I hope Senators will not leave and that they will be here with us tomorrow to work through these lists, because we can get this bill very well done.

I will say to my colleagues that we have made tremendous progress on this today. We have dealt with the most critical elements of Public Utility Holding Company Act reform and I believe that is going to be successfully done with the exception of one or two amendments.

I think we have dealt with virtually all of the nuclear amendments which are highly contentious, and that was a good debate, a 3-hour debate today, and that was settled. There are a few small nuclear matters.

We have dealt by unanimous consent with CAFE. That cannot come up.

We have dealt with ANWR. I think that will be disposed of here.

We will be well on our way to getting this bill done and, if Senators cooperate, we will be well on our way to complete it early Tuesday of next week. We will be here early in the morning whatever time the leader says.

Mr. DOLE. First, I want to thank the majority leader and the manager. I think they have made progress, 40 some amendments. Certainly the majority leader indicated the measure of what we do does not depend on how many rollcall votes we have. Most of our colleagues are pleased we are going in the other direction and have had fewer rollcall votes.

But I would only add I think sometimes it is easier to get cooperation from both sides of the aisle if sometimes we have to make arrangements. It will happen from time to time, and I know it is frustrating for the leadership, particularly the majority leader who has the responsibility and who gets the blame if something does not happen.

Having been the majority leader, it is very difficult because it does become self-fulfilling. So many Members leave, or somebody stands up Thursday at 4 o'clock and says: There will be no more votes today.

It just takes one. I will be here talking; the rest of you can go home. I have had that happen a time or two when I was majority leader, and it works rather well and we have tried it ourselves since learning how it is done.

Certainly we will cooperate with the majority leader. I think in this case if we can dispose of this bill by what, maybe late Tuesday or Wednesday, that will be—as the Senator has indicated, most of Tuesday was unemployment, extension of unemployment benefits, so it has been Wednesday, Thursday, and part of Friday; and then Tuesday and Wednesday. This is a very significant piece of legislation, so I will be working with the majority leader and the managers to try to accomplish that by early next week.

Mr. MITCHELL. Mr. President, I thank the distinguished Republican leader for his comments. As I noted earlier, there has been superb cooperation obviously within the framework of the competitive system under which we operate, and I recognize that many times the carrot-and-stick approach is necessary, so the only way to get people to move is to create an inducement, and that inducement frequently being not being in session at a particular time, and we are going to continue that obviously to the extent necessary and appropriate.

I merely want to reiterate what I said earlier so there can be no misunderstanding on any Senator's part. Not including tomorrow, because, frankly, we are stuck, but thereafter, there will be votes on every Friday, perhaps several votes, unless it is stated specifically to the contrary prior to a particular Friday. I will over this recess period reconsider, although I make no decision in that regard as of now, whether or not we will continue the current practice of limiting votes to the period prior to 7 p.m. on Tuesdays and Wednesdays when the Senate is in session.

Mr. EXON. Will the majority leader yield for a question?

Mr. MITCHELL. Yes.

Mr. EXON. I believe that all members should understand the difficult position the two leaders are placed in, and I thank the majority leader in cooperation with the minority leader on the statement just made.

My question has to do with when the Senator from Nebraska was in the Chair within the hour, it was announced by the managers of the bill that we would meet tomorrow and we would have a vote on the Bryan amendment.

While the Senator from Nebraska was in the Chair, within the hour, it was announced, I thought, by the managers of the bill that there would be a vote tomorrow on the Bryan amendment and we were going to have a very busy day. I take it from what the majority leader just said that that has now been rescinded and we will not have a vote?

Mr. JOHNSTON. Not the busy day, but the vote on the Bryan amendment.

We believe the Bryan motion to strike would require a vote. Is that correct?

Mr. BRYAN. Mr. President, responding to the inquiry from the distinguished Senator from Louisiana, that is correct. I understood the leader to have said—I do not want to confuse things—there will be by implication no rollcalls tomorrow by reason of the circumstances to which he has previously addressed himself. I am perfectly amenable to entering into a time agreement to bring that up the very first time that we return following the recess, allowing 30 minutes or less.

Mr. EXON. That is all very nice and it is all very courteous. I guess my question is why do we not have a vote tomorrow? This Senator was not told earlier that we were not going to have a vote. Am I advised by the leader that we could not get a quorum tomorrow?

Mr. MITCHELL. Mr. President, no Senator was told that there would not be a vote tomorrow. I repeatedly told Senators orally and in writing—I do not know how else to communicate other than orally and in writing—there will be votes on Friday. We now confront a situation where a large number of Senators, both Republicans and Democrats, have simply left and having left, and either being en route to wherever they are going or having arrived there, then communicating with the distinguished Republican leader and myself and asking that no votes occur because they are not here and they do not want to miss votes.

Might I ask, Mr. President, if we could, if I could suggest the absence of a quorum and have a discussion with the managers further in this regard.

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. (Mr. BRYAN). Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, following consultation with the managers and the distinguished Republican leader, I want to make one further announcement regarding the schedule in the future, and then with respect to the remainder of this week.

In addition to there being votes on Fridays and reconsideration of the policy with respect to votes on Tuesdays and Wednesdays, every Senator should know that there is a possibility of votes at any time during days when the Senate is in session, including procedural votes, should I judge that to be necessary to gain the presence of Senators for the conduct of important business here.

No Senator who receives any assurances to the contrary should rely on such assurances. That possibility will exist at all times when the Senate is in session. This is to provide ample notice in advance to all Senators of that policy.

I want there to be no misunderstanding, no possibility of confusion; during those times when the Senate is in session there is a possibility for a rollcall vote at any time, including votes on procedural matters, should I judge it necessary to obtain the presence of Senators for the conduct of business.

Every Senator has now been appropriately and adequately forewarned, and I repeat, no assurances to the contrary should be given weight because such assurances will have no basis and will not be cause to prevent votes from occurring should it prove to be necessary.

MORNING BUSINESS

MAYOR ODELL WEEKS: A LIFETIME OF PUBLIC SERVICE

Mr. HOLLINGS. Mr. President, when Mayor Odell Weeks of Aiken retired late last year after a remarkable half century in office, the State of South Carolina said farewell to one of its most beloved and accomplished public servants. Mayor Weeks served on the Aiken city council continuously from 1943 through 1991, and served as mayor for all but 6 of those years. His career was an extraordinary story of resilience, adaptation, and achievement.

In the post-war era, Mayor Weeks' leadership and character have defined the city of Aiken. His initiatives have given shape to a modern city that takes tremendous pride in its quality schools, its diversified economic base, and its superbly managed government. It was Mayor Weeks who mobilized the city to accommodate the Savannah River plant in the early 1950's. In the mid 1950's, he persuaded the city to adopt the council-manager form of government, which might be his proudest accomplishment. And he was the driving force behind creation of the Verenes Industrial Park, which has been a catalyst for Aiken's economic growth and diversification.

Through it all, Odell Weeks has been the glue and the propellant in Aiken's transformation since the Second World War. When I look back on Odell's career—his single-minded dedication to Aiken's advancement and progress—I am reminded of President Eisenhower's remark when a reporter asked him why he had purchased his farm up in Gettysburg. Ike answered that he bought it because he had always wanted to take one small piece of God's Earth and return it better than when he found it.

The city of Aiken has been Odell Weeks' chosen piece of God's Earth. It has been his life's project. And it has flourished thanks to his vision and stewardship. With his retirement, Aiken has lost a mayor but gained an elder statesman. For me personally, going back decades, Odell has been an advisor, an ally, and a terrific friend. I wish him all the best in retirement.

WOMEN'S EDUCATIONAL EQUITY ACT FUNDING MUST BE RESTORED

Mr. ADAMS. Mr. President, I am committed to providing the highest quality education for all Americans. But the administration has a different idea. The President's budget proposal eliminates the Women's Educational Equity Act, the one Federal educational program devoted to giving girls and women equal education opportunities.

I disagree with the administration's statement that there is a decreased need in supporting educational equity programs. There are still fewer women in math and science fields. There are far fewer women serving as college presidents and school superintendents. A study by the American Association of University Women found that girls receive less attention in class, sexual harassment claims have increased but responses have not, and some curricula contains gender stereotypes.

WEEA was passed by Congress in 1974 with bipartisan support. It has been reauthorized several times. Since the 1980's, the administrations have chipped away at this important program to the point that they wish to demolish it entirely. The President's budget proposal is a cynical attempt to eliminate educational equity in general. It is an attempt to hinder or deny women and girls the same right to an education, and thus to jobs and careers.

Almost every State has had a WEEA grant at some time. The WEEA grants have made for educational equity endeavors ranging from early childhood education to graduate and adult education. School districts have used these grants to comply with title IX of the Education Amendments of 1972, the Federal prohibition on sex discrimination in education. This year is the 20th anniversary of title IX. The President's request is a slap in the face not only to WEEA but to title IX and its purpose as well.

We need to restore WEEA to a level at which it can continue its mission of providing girls and women with the same access to and quality of education that their brothers, husbands and sons receive. I intend to urge my colleagues on the Appropriations Committee to restore funding to the Women's Educational Equity Act so that it can reach its goals.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, February 6, 1992, he had presented to the President of the United States the following enrolled bill:

S. 1415. An act to provide for additional membership on the Library of Congress Trust Fund Board, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BENTSEN, from the Committee on Finance:

Kevin E. Moley, of Louisiana, to be Deputy Secretary of Health and Human Services.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. BIDEN, from the Committee on the Judiciary:

Sandra S. Beckwith, of Ohio, to be U.S. district judge for the Southern District of Ohio;

Ronald M. Whyte, of California, to be U.S. district judge for the Northern District of California;

Philip G. Reinhard, of Illinois, to be U.S. district judge for the Northern District of Illinois;

Jon P. McCalla, of Tennessee, to be U.S. district judge for the Western District of Tennessee;

Julie E. Carnes, of Georgia, to be U.S. district judge for the Northern District of Georgia;

Nancy G. Edmunds, of Michigan, to be U.S. district judge for the Eastern District of Michigan;

David W. McKeague, of Michigan, to be U.S. district judge for the Western District of Michigan;

Frederick J. Scullin, Jr., of New York, to be U.S. district judge for the Northern District of New York;

Stevens D. Merryday, of Florida, to be U.S. district judge for the Middle District of Florida; and

K. Michael Moore, of Florida, to be U.S. district judge for the Southern District of Florida.

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. SPECTER:

S. 2200. A bill to amend the Job Training Partnership Act to establish a demonstration program to provide jobs for economic growth; to the Committee on Labor and Human Resources.

By Mr. BROWN (for himself and Mr. DOLE):

S. 2201. A bill to authorize the admission to the United States of certain scientists of the Commonwealth of Independent States as employment based immigrants under the Immigration and Nationality Act, and for other purposes; to the Committee on the Judiciary.

By Mrs. KASSEBAUM:

S. 2202. A bill to amend the Internal Revenue Code of 1986 to provide that farm land adjoining a principal residence qualifies for the one-time exclusion of gain from sale of such residence; to the Committee on Finance.

By Mr. DURENBERGER:

S. 2203. A bill to extend until January 1, 1995, the existing temporary suspension of duty on cyclosporine; to the Committee on Finance.

By Mr. DURENBERGER (for himself, Mr. KOHL, Mr. BAUCUS, and Mr. SMITH):

S. 2204. A bill to amend title 23 United States Code, to repeal the provisions relating to penalties with respect to grants to States for safety belt and motorcycle helmet traffic

safety programs; to the Committee on Environment and Public Works.

By Mr. LEAHY (for himself, Ms. MIKULSKI, Mr. ADAMS, and Mr. D'AMATO):

S. 2205. A bill to amend the Public Health Service Act to provide for the establishment or support by States of registeries regarding cancer to provide for a study regarding the elevated rate of mortality for breast cancer in certain States, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. KASTEN:

S. 2206. A bill to amend the Internal Revenue Code of 1986 and title II of the Social Security Act to expand the social security exemption for election officials and election workers employed by State and local governments; to the Committee on Finance.

By Mr. DODD (for himself, Mr. GARN, Mr. SANFORD, Mr. KERRY, and Mr. D'AMATO):

S. 2207. A bill to provide for interstate banking and branching; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. PACKWOOD:

S. 2208. A bill to amend the Congressional Budget Act of 1974 to provide for truth in budgeting with respect to intragovernmental transaction involving trust funds; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other committee has 30 days to report or be discharged.

By Mr. BREAUX (for himself, Mr. BOREN, and Mr. NICKLES):

S. 2209. A bill to amend the Internal Revenue Code of 1986 to modify the application of the alternative minimum tax to oil and gas drillings investments and for other purposes; to the Committee on Finance.

By Mr. BENTSEN (for himself, Mr. PRYOR, Mr. PACKWOOD, Mr. MOYNIHAN, Mr. ROTH, Mr. BOREN, Mr. DANFORTH, Mr. RIEGLE, Mr. DURENBERGER, Mr. ROCKEFELLER, Mr. GRASSLEY, Mr. BREAUX, Mr. CHAFEE, Mr. DASCHLE, Mr. HATCH, Mr. JOHNSTON, and Mr. HOLLINGS):

S. 2210. A bill to provide a 1 year delay in the implementation of the final regulations issued by the Internal Revenue Service under sections 401(a)(4), 410(b), 414(r), and 414(s) of the Internal Revenue Code of 1986; to the Committee on Finance.

By Mr. NICKLES (for himself and Mr. BOREN):

S. 2211. A bill to amend the Internal Revenue Code of 1986 to eliminate tax penalties that apply to oil and gas investments and for other purposes; to the Committee on Finance.

By Mr. RIEGLE (by request):

S. 2212. To provide funding for the Resolution Trust Corporation and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. KASSEBAUM:

S.J. Res. 251. A joint resolution to designate the month of May 1992 as "National Huntington's Disease Awareness Month"; to the Committee on the Judiciary.

By Mr. DIXON:

S.J. Res. 252. A joint resolution designating the week of April 19-25, 1992, as "National Credit Education Week; to the Committee on the Judiciary.

By Mr. SEYMOUR:

S.J. Res. 253. A joint resolution to reduce Senate pay if the Senate fails to pass a bill or resolution no later than March 20, 1992, to stimulate national economic growth, and for other purposes; to the Committee on Rules and Administration.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LEAHY (for himself and Mr. ADAMS):

S. Res. 255. A resolution to express the sense of the Senate regarding breast cancer; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 2200. A bill to amend the Job Training Partnership Act to establish a demonstration program to provide jobs for economic growth; to the Committee on Labor and Human Resources.

JOBS FOR ECONOMIC GROWTH ACT

Mr. SPECTER. Mr. President, today I am introducing legislation that will establish a new program to provide employment opportunities to reemploy dislocated workers and provide avenues to employment for recipients of public assistance and the chronically unemployed. This legislation, which is modeled after the Allegheny County Works Program in Pittsburgh, will give participants the training and skills needed to become productive members of the labor force. Under the program, $50 million would be authorized to demonstrate effective and innovative approaches to prepare the unemployed for entry into the work force.

This program will also benefit the community in which the program is operating by renovating and repairing public facilities such as community and recreation centers, maintenance and revitalization of public parks, and beautification projects. For most participants in this program, public service work alone will not be enough to prepare them for the job market. For those whose old jobs no longer exist, or those who have little or no work experience, there will be the need to learn new vocational skills. Courses will be provided through individually designed part-time programs offered both during and after working hours. Training and education will be matched with the participant's work schedule. Courses will include both basic literacy skills as well as college programs—courses for those who need to prepare for their first job, and those who need to learn a new career after years of productive work.

Benefits provided by this program would include an average wage of $6 per hour and health care coverage. Program participants may also be paid up to 5 hours a week for education and training programs relevant to their employment needs.

Finally, the bill contains a provision to assist program participants to prepare them to find and retain employment.

I look to this legislation to support new training and education ventures—ones that will demonstrate the potential of on the job work experience and educational training—necessary to get our people back to work.

I urge my colleagues to join with me in sponsoring this important measure.

By Mr. BROWN (for himself and Mr. DOLE):

S. 2201. A bill to authorize the admission to the United States of certain scientists of the Commonwealth of Independent States as employment-based immigrants under the Immigration and Nationality Act, and for other purposes; to the Committee on the Judiciary.

COMMONWEALTH SCIENTISTS IMMIGRATION AND EXCHANGE ACT

• Mr. BROWN. Mr. President, today I am introducing a bill for myself and the distinguished minority leader, Senator DOLE, to address one of the fundamental dangers to arise as a result of the disintegration of the Soviet Union: the sudden availability of talented scientists who have specialized in developing weapons of mass destruction. It is called the Commonwealth Scientist Immigration and Exchange Act of 1992.

Reports as recent as an Associated Press story on the wire yesterday indicate that "nuclear mercenaries [may] sell expertise or hard-to-track components to nations trying to build a bomb." Although that is not yet the case, it may be if we do not act soon.

The situation in the former Soviet Union is grave. Food is scarce, the military is demoralized and unemployment has reached record levels. It is no wonder that there is such great concern that scientists of the former Soviet Union may be willing to market their skills to unscrupulous nations bent on developing weapons that can threaten the world's security. If the choice for them is between whether their families can eat or an undesirable move to the middle of the Libyan desert to develop nuclear weapons, some of these scientists may consider moving to Libya.

A Congressional Research Service [CRS] background paper notes that Soviet nuclear scientists are experiencing an incredible shock as they transition to a peaceful society. Before, under the Communist government, they were well-paid and had access to many benefits, including housing, travel, and access to Western goods. Now, these once prestigious scientists are making salaries barely sufficient to meet their needs—not more than $10 per month. Entire cities, constructed to house the scientific talent of the massive Soviet defense establishment, lie idle.

Estimates of how many Commonwealth scientists have been affected

vary. CIA Director Robert Gates testified that there are between 1,000 and 2,000 top Soviet nuclear weapons designers. Former Soviet officials estimate that of the 100,000 workers in the nuclear complex, 3,000 to 5,000 have access to sensitive information concerning nuclear weapons design.

In an article entitled "Scientists of Former Soviet Union Find the U.S. Slow in Putting Out the Welcome Mat for Them," the Wall Street Journal outlines the problems of one Soviet scientist who came to the United States. Mr. President, I ask unanimous consent that this article be reprinted in full at the conclusion of my remarks.

Mr. Ivanov, a 28-year-old electrical engineer cited in the article, decided to leave the Soviet Union during the August coup attempt. It took him more than 2 months to get a visa to the United States and now he is begun the difficult task of finding a job. Many of his scientific friends have left Moscow, he reports. None have gone to Iraq, Libya, or Iran. But, he notes:

If these Soviet scientists aren't needed in Europe or the U.S., they must go somewhere to eat.

The story makes two points. First, our ability to process visa requests for these scientists is not quick enough. This legislation is designed to speed the process and remove existing obstacles. Second, many of these scientists are having difficulty finding a job in the Commonwealth or in the United States. This bill expresses the sense of Congress that some of the funds set aside for the reduction of the Soviet threat should be used to ensure these scientists are gainfully employed in research projects that benefit American competitiveness.

Let me explain the details of the bill I'm introducing today. Entitled the Commonwealth Scientists Immigration and Exchange Act of 1992, the bill applies to those Commonwealth scientists and engineers who have expertise in nuclear, chemical, biological, or high technology or other high technology fields or who are working on nuclear, chemical, biological or other high-technology defense projects.

It contains two provisions to facilitate the immigration of Commonwealth scientists to the United States: it automatically waives the job offer requirement for exceptionally qualified immigrants if those immigrants are Commonwealth scientists. The bill also permits the Attorney General to classify these scientists, based on their level of expertise, as eligible for work visas, with appropriate labor certifications, whether or not they possess advanced degrees. This waiver authority for the classification of the exceptionally gifted ends four years after the bill is enacted. Furthermore, the Attorney General is required to prescribe regulations to permit the identification of those scientists who are eligible for the waiver.

Another means of effectively employing these scientists in a way that also benefits the American economy is to increase their eligibility for U.S. Government exchange and scholarship programs. A wide variety of exchange programs already exists. This bill expresses the sense of Congress that these Commonwealth scientists should be given priority consideration for exchange programs for which they are eligible. The administration can take a variety of actions to increase the eligibility of these scientists, especially by defining as broadly as possible existing programs so that they can accommodate Commonwealth scientists who might be interested in getting further education or doing research. Opportunities like these should be designed to permit them the maximum flexibility, especially so they can redirect their skills into pursuits that will benefit the U.S. economy and the fledgling commercial economy in the Commonwealth.

During the last session of the Congress, we set aside $400 million from the defense budget for the dismantling of the Soviet nuclear threat but in the ensuring weeks, we have learned that a major portion of the world's future nuclear threat comes from rogue nations attempting to hire these brilliant scientists. This bill contains a section that expresses the sense of Congress that the President should set aside some of these funds to ensure the Commonwealth scientists are gainfully employed within the Commonwealth, without affecting American jobs. Additionally, we urge the President to ensure that any byproducts of these projects conducted in the CIS should be designed to enhance American competitiveness and to provide financial returns to the taxpayer to the greatest extent possible, while ensuring the scientists are gainfully employed.

Estimates for employing all of them for a year range from as little as $5 million to only $18 or $20 million. The bill expresses our strong sentiment that the activities these scientists are employed in, such as the dismantling of their nuclear arsenal and other projects, should in no way affect the jobs of American workers.

The possible movement of nuclear scientists of the Commonwealth to nations like Libya, Iran, and others whose goal is the development of weapons of mass destruction, is not a problem that can wait for a solution. It is one that will be decided in the next few months, even the next few weeks. I urge my colleagues to join me in passing this measure as quickly as possible, to ensure existing impediments are removed and all focus and energies are turned to the effective solution of this important problem.

Before relinquishing the floor, I would like to take a moment to especially thank our distinguished minority leader, Senator DOLE, for joining me in this effort. I would also like to thank my colleague from Wyoming, Senator SIMPSON. Senator SIMPSON has made his staff available to us as we have prepared this bill, and they have provided excellent technical advice and assistance. I would especially like to thank Carl Hampe, of Senator SIMPSON's staff, for his work on this bill. I look forward to working together further as the bill is taken up by the Immigration Subcommittee on which he serves.

Mr. President, I ask unanimous consent that the Commonwealth Scientist Immigration and Exchange Act of 1992 be printed in the RECORD.

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

S. 2201

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 "Commonwealth Scientists Immigration and Exchange Act of 1992".

SEC. 2. PURPOSES.

(a) IN GENERAL.—The purposes of this Act are—

(1) to deter the proliferation of expertise in nuclear, chemical, biological, or other high technology fields which may be applied to defense projects in Third World countries; and

(2) to enhance American competitiveness with foreign economies.

(b) CONSTRUCTION.—Nothing in this Act may be construed to affect adversely the employment, wages, or working conditions of workers in the United States.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term "Commonwealth of Independent States" means the constituent republics of Armenia, Azerbaijan, Belarus, Kazakhstan, Kirghizistan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan;

(2) the term "eligible Commonwealth scientists" means aliens—

(A) who are nationals of any of the constituent republics of the Commonwealth of Independent States; and

(B) who are scientists or engineers who have expertise in nuclear, chemical, biological or other high technology fields or who are working on nuclear, chemical, biological or other high-technology defense projects; and

(3) the term "Soviet threat reduction funds" means funds which were transferred under section 221 of the Soviet Nuclear Threat Reduction Act of 1991 (Public Law 102-228) for use in reducing the Soviet military threat in accordance with that Act.

SEC. 4. WAIVER OF JOB OFFER REQUIREMENT.

For requirement in section 203(b)(2)(A) of the Immigration and Nationality Act that an alien's services in the sciences, arts, or business be sought by an employer in the United States shall not apply to any eligible Commonwealth scientist who is applying for admission to the United States for permanent residence in accordance with that section.

SEC. 5. CLASSIFICATION OF COMMONWEALTH SCIENTISTS AS HAVING EXCEPTIONAL ABILITY.

(a) IN GENERAL.—The Attorney General shall designate a class of eligible Common-

wealth scientists, based on their level of expertise, as aliens who possess "exceptional ability in the sciences", for purposes of section 203(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A)), whether or not such scientists possess advanced degrees.

(b) REGULATIONS.—The Attorney General shall prescribe regulations to carry out subsection (a).

(c) TERMINATION.—The authority of subsection (a) shall terminate 4 years after the date of enactment of this Act.

SEC. 6. INTERNATIONAL EXCHANGE PROGRAMS.

It is sense of the Congress that—

(1) eligible Commonwealth scientists should be given priority consideration for all United States Government exchange and scholarship programs which were available, before December 25, 1991, to students and citizens of the former Union of Soviet Socialist Republics for which such scientists would otherwise have been eligible;

(2) the President should make every effort to define existing programs broadly enough to accommodate eligible Commonwealth scientists seeking graduate education in the commercial applications of their field or specialty; and

(3) the President should make every effort to permit eligible Commonwealth scientists to apply for graduate exchange programs that would cross-train them in another specialty, including business or law.

SEC. 7. POLICY ON USE OF SOVIET THREAT REDUCTION FUNDS.

It is the sense of the Congress that, in making available Soviet threat reduction funds—

(1) priority should be given to ensure that eligible Commonwealth scientists are gainfully employed in the Commonwealth of Independent States in research and other projects which would enhance the objectives of nonproliferation of weapons of mass destruction, without affecting the jobs of American scientists;

(2) the byproducts of such research and other projects should be designed to enhance American competitiveness and to provide financial returns to the taxpayer to the greatest extent possible; and

(3) priority should be given to the creation of educational fellowships and other internships for eligible Commonwealth scientists with American industry in order to train such scientists in commercial and business applications of their specialties for the purpose of facilitating the process of economic reform in the Commonwealth of Independent States.

[From the Wall Street Journal, Feb. 3, 1992]

SCIENTISTS OF FORMER SOVIET UNION FIND THE UNITED STATES SLOW IN PUTTING OUT THE WELCOME MAT FOR THEM

(By Gerald F. Seib and John J. Fialka)

WASHINGTON.—Back when there was a Soviet Union and he had a job in it, Sergei Ivanov was an electronic and optical engineer who designed sophisticated medical devices.

But as the Soviet Union collapsed last fall, Mr. Ivanov fled to the U.S. with his wife Natalia, herself a skilled computer scientist who worked in Soviet space and missile research. Now they live here with their two young children in a shabby house in a rough section. Crowded in with them are three other emigre Soviet families and four single people.

To survive, Mr. Ivanov has been forced to turn to a different kind of medical work. He earns money by volunteering as a human guinea pig for research experiments at the National Institutes of Health. "Sometimes it's dangerous, sometimes not," he says with a shrug.

The plight of these two highly educated scientists illustrates one of the most sensitive problems arising from the ashes of the Soviet Union. Despite its shortcomings, the Soviet Union produced perhaps the world's largest cadre of technically skilled scientists, many of whom worked in one fashion or another for the defense establishment that permeated Soviet industry.

FLEEING, BUT WHERE?

Now many of those scientists are fleeing the former Soviet Union. Unless Western nations devise a way to put them to work, some undoubtedly will take their skills to such nations as Iraq, Iran, Libya and South Africa. Belatedly, a rush of activity is beginning here to find safer homes for these scientists.

The Bush administration is expected soon to propose using U.S. funds to hire scientists from the Soviet nuclear weapons industry and putting them in a kind of "talent bank," where they could dismantle nuclear arms or be dispatched to Western countries as need for them arises. In a related move, German Foreign Minister Hans-Dietrich Gensher has proposed establishing an international foundation that would employ nuclear scientists.

Meanwhile, at least three private U.S. companies already have signed deals to use Russian scientists in Russia for various research projects, and are finding they can reap significant savings by doing so. And the Jamestown Foundation, a private group, has launched a program to find temporary spots for scientists in businesses and universities and as schoolteachers.

But those proposals only begin to deal with what promises to be a massive brain drain from the former Soviet Union. Perhaps a million people worked somewhere in the former Soviet nuclear weapons program, says Robert Gates, the director of Central Intelligence; he estimates that about 2,000 scientists have the "critical skills necessary to design nuclear weapons."

Beyond that, a U.S. analyst who has closely examined the Soviet arms industry estimates that another 100,000 people possess some expertise useful to a country trying to build ballistic missiles. A "couple of thousand" more have some knowledge of how to produce biological weapons, he says. Finally, a few hundred others have skills that could be used to significantly improve the quality of the Third World's chemical weapons, U.S. analysts estimate.

SMALL NUMBER CAN TIP BALANCE

U.S. officials whose business it is to monitor the situation say they have evidence that some of these scientists are being wooed by other nations. Government analysts privately doubt that the old KGB controls on defense scientists are still in place amid the current chaos of the old Soviet Union. Even a small seepage into Iraq, Iran or Libya could have catastrophic consequences. "It's a no-win expertise," says Graham Fuller, a former top CIA analyst. "You can get 90% of these guys, but if you miss 10%, there goes the ball game."

Yet there is much more to this than a new generation of national security threats. As at the end of World War II, the U.S. also risks losing out if it fails to snare some of the top-level scientific minds that are up for grabs. Scientists from the former Soviet Union say most of their colleagues who want out would prefer to move to the U.S. and Western Europe. but many are finding it tough to land work in the West, particularly because the end of the Cold War arms race is unleashing onto the job market many western scientists who have similar skills, and who already speak English.

Soviet scientists often have to fight a Catch-22 in the U.S. Employers don't want to hire them unless they get work visas, but they can't get work visas until they can show they will be employed. There is an additional roadblock left over from the Cold War: Defense contractors generally don't want to hire scientists from the former Soviet Union because doing so could violate security regulations that come along with government contracts.

"There would be many more here, but it isn't easy to open a new position here," says Roald Sagdeev, a scientists who has found a post at the University of Maryland.

The result is that many scientists may look elsewhere. "Nowadays there is a very serious flood to Israel, which is understandable because of so many restrictions for people to reach the American coast," says Yevgeny Schuhkin, a Russian who has found a temporary spot as a visiting professor of material sciences at Johns Hopkins University. Others, he says, have sought to emigrate to South Africa.

The problems faced by Mr. Ivanov, the 28-year-old electrical engineer, are illustrative. In Moscow, it had become harder and harder to find food and decent housing for the 500 to 1,200 rubles a month—$4 to $10 a month at the current exchange rate—that he could earn through his salary as a researcher and his work as a designer in a Soviet scientific institute.

He decided to flee during last August's coup attempt. By October, Mr. Ivanov had managed to get visas to the U.S. through Russian acquaintances at a church, his family found lodging at the run-down group house here, which has dilapidated lawn equipment littering the front porch and curtains draped across doorways inside to give some privacy to the various residents. The family has piled its possessions into a single, littered room inside the house, and serves tea to a visitor out of a metal pot straight off the stove. Mr. Ivanov's wife had a baby in December, and the new parents are grateful that some friends donated clothing for the infant.

"I can't say the living conditions are wonderful, but it's better than nothing," says Mr. Ivanov.

He yearns to work for a U.S. company designing electronic devices. Companies he has contacted sometimes say they can use scientists with his skills but that he must first become a U.S. citizen, or say he would have to get security clearances to work on their government contracts. Meanwhile, besides volunteering for medical experiments, he has raked leaves and repaired TVs to scrape together money.

Many of his scientific friends also have fled Moscow, reports Mr. Ivanov. None have gone to Iraq, Libya or Iran, he says. But, he adds: "If these Soviet scientists aren't needed in Europe or the U.S., they must go somewhere to eat." If things don't work out for him here, he says, he won't return to Russia, but will look for a life in another country.

Some U.S. companies are finding that one way to take advantage of former Soviet scientists is to bring the work to them. For example, General Atomics Corp., a San Diego-based nuclear research concern, has two projects under way with Russian scientists. One will continue work the scientists were

doing for the Soviet Union in the nuclear fusion area, only now they will be working for General Atomics. "Their facilities are excellent," says Wayne Willis, director of Washington operations for General Atomics. The fusion area involves research to see if the fusing of simple atoms, the process used in the hydrogen bomb, can be used to make safe, pollution-free nuclear reactors that run on cheap fuel sources, such as water.

OTHER PROJECTS

General Atomics also has Russian scientists working on thermonics, an effort to use nuclear reactors in space to generate large amounts of electrical power that would be needed for space probes and large satellites. The Russians have a process that converts heat directly to electricity without the need for a generator.

Similarly, Findette Corp., a small chemical manufacturer located in St. Charles, Mo., has a joint venture with a private company formed by a team of scientists of the former Soviet Institute of Chemical Physics.

"These people have breakthroughs that nobody else has," says Barney O'Meara, executive vice president of Kiser Research Inc., a Washington based research firm which helped arrange the deal. The "breakthrough" in this case is called a "turbulent microreactor," a tube-shaped chemical reactor that could be used to destroy nerve gas, among other uses.

What's more, notes Mr. O'Meara, "You can get a team of 10 scientists plus all their laboratory support services for what it would cost you to hire one scientist over here."

A larger U.S. corporation, Monsanto Co., the St. Louis based maker of chemical and agricultural products, has a contract with the Shemyakin Institute in Moscow, where for $500,000, 10 scientists are doing research on drugs and plant and animal growth for the U.S. company. The company has a second project under way with three other former Soviet research institutes to exploit technology to put a diamond-hard coating on plastics. "This gives us stuff that we don't have to re-invent," says a Monsanto spokesman. One possible application would be cheaper, stronger windows for airplanes.●

By Mr. DURENBERGER:

S. 2203. A bill to extend until January 1, 1995, the existing temporary suspension of duty on cyclosporine; to the Committee on Finance.

EXTENSION OF DUTY SUSPENSION ON CYCLOSPORINE

● Mr. DURENBERGER. Mr. President, I rise today to introduce legislation that would extend until January 1, 1995, the current duty suspension of the drug cyclosporine that is due to expire at the end of this year.

Cyclosporine is an immunosuppressant drug that has proven to be very important in helping patients survive an organ transplant operation. Cyclosporine appears to suppress the bodies' natural immune system, and in so doing, helps the patient fight organ rejection. The drug is manufactured by a company in Switzerland and is not manufactured in the United States. Two years ago, Congress adopted an amendment I introduced that suspended the duty on this drug until the end of this year. The legislation I am offering today merely extends that duty suspension another 2 years.●

By Mr. DURENBERGER (for himself, Mr. KOHL, Mr. BAUCUS, and Mr. SMITH):

S. 2204. A bill to amend title 23, United States Code, to repeal the provision relating to penalties with respect to grants to States for safety belt and motorcycle helmet traffic safety programs; to the Committee on Environment and Public Works.

REPEAL OF CERTAIN PROVISIONS OF LAW RELATING TO SEAT BELTS AND MOTORCYCLE HELMETS

● Mr. DURENBERGER. Mr. President, the goals of the recently enacted provisions regarding the use of safety belts and motorcycle helmets—section 153 of title 23, U.S.C.—are laudable—the reduction of the number of fatalities and crippling injuries which occur on our Nation's roadways. In 1989 over 45,000 lives were lost in motor vehicle accidents and over 3 million people were injured, The consequence of these deaths and injuries cost our country approximately $74 billion each year. These losses are generated by a combination of lost lives, productivity, medical and rehabilitation expenses, and insurance and litigation costs.

The proponents of the safety belt and helmet provisions expect that this legislation will significantly reduce those losses which befall unbelted motorists and unhelmeted motorcyclists. The intent is to provide "a carrot and stick" mechanism of manipulating the disbursement of Federal highway funds in order to coerce States into adopting mandatory safety belt and helmet laws.

I believe there is merit in using Federal funds for highway safety research, to encourage States to improve traffic safety via greater education efforts and by stimulating innovative programs designed to reduce the number of high risk motorists. However, I have serious reservations about using Federal "blackmail" to force States into enacting mandatory seatbelt and motorcycle helmet laws. Likewise, I believe that outlining how a State spends its own money—which the Federal Government collects through the gas tax—erodes the principles of flexibility which were redefined in the Intermodal Surface Transportation Efficiency Act of 1991.

Mr. President, it is for those reasons that I am introducing a bill to repeal the penalty provision of section 153 of title 23. My bill retains the grant program as a positive incentive to pass both laws, while also encouraging a high rate of compliance with the laws. Throughout the process of passing the ISTEA last year, I went on record in opposition to this penalty proposal. I recognize that both bodies of Congress included the safety belt and helmet provisions in their respective bills. However, I strongly believe that Congress should reexamine this attempt to manipulate State governments.

The fatality record in Minnesota seems to contradict the evidence that mandatory helmet laws are the best way to increase traffic safety of motorcyclists. During the period—1968–77—when Minnesota had a mandatory traffic safety law, fatalities per 10,000 registered vehicles went up every year.

In contrast, during subsequent years in which Minnesota has not required adult operators and passengers to wear helmets, the fatality rate has plummeted to an all-time low. This occurred because Minnesota motorcyclists and lawmakers realized that there is no substitute for continued ongoing traffic safety education and tough licensing provisions. Minnesota motorcyclists encouraged the State legislature to enact tough licensing standards. They have also implemented comprehensive rider education programs and public awareness programs which have won national recognition and served as a model which other States have emulated.

The Minnesota Motorcyle Riders Association and ABATE of Minnesota implemented "Dial-A-Ride," a program utilizing volunteers to keep impaired riders off the road. It offers a workable alternative by transporting an impaired rider and his bike to his home or to a motel, if needed. The program operates from May 1 to October 31, the primary season to operate a motorcycle in Minnesota. The program has widely distributed posters that prominently display the phone number to call to use its service.

I would like to encourage my colleagues to closely examine why Minnesota has been able to drastically lower the fatality rate of its motorists to one of the lowest in the Nation. I think they will find it is because Minnesotans know that there is no panacea or easy fix. Minnesotans know that it takes persistent effort in a broad array of traffic safety initiatives to significantly reduce roadway fatalities. Minnesota motorists and motorcyclists have shown that they have a strong commitment to improving traffic safety. They have requested, supported and prodded the Minnesota legislature to honestly and competently meet their demands for safer roadways. They do it because in Minnesota good behavior is rewarded—not because someone in Washington said they "had to do it."

Mr. President, my bill retains the reward for implementing both laws. It does not penalize, punish or micromanage the State's Federal funds if they choose not to pass either a mandatory seatbelt or helmet law. Proponents of the penalty provision will tell you that it is not a mandate. The penalty directs States to spend additional moneys on the section 402 program in exchange for not passing the laws. But, most States already have programs in place. Forcing them to spend more money is only giving public safety offices the green light to come up with ways to spend more money. In

fiscal year 1996, Minnesota will be forced to spend over 12 times the amount it will spend in fiscal year 1992 on section 402 programs. I am concerned that under those circumstances, the result could be irresponsible spending.

In closing, I would caution my colleagues that reliance on Federal mandates to traffic safety, such as that embodied in Public Law 102-240, may be counterproductive in the long run. It seems to me that a wiser course of action would be to enlist cooperative support and to harness the creative energies of concerned citizens to work together with the goal of decreasing the number of serious traffic accidents. Consequently, I believe that the Intermodal Surface Transportation Efficiency Act needs to be refocused to solicit teamwork, rather than provoke conflict between government and citizens, both of whom share a common goal of improved traffic safety.

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. 2204

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.

(a) IN GENERAL.—Subsection (h) of section 153 of title 23, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—Subsections (i) through (k) of section 153 of title 23, United States Code, are redesignated as subsections (h) through (j), respectively, of such section.●

● Mr. KOHL. Mr. President, I am delighted to join with Senator DURENBERGER in introducing this legislation to correct what we see as a flaw in the transportation bill we passed last year.

As my colleagues recall, when we debated the issue of mandatory seatbelt and helmet laws last year, we pretty much agreed that the Federal Government did not have the right to require States to pass them. But we also agreed that such laws might be desirable. So in the Senate version of the transportation bill we attempted to persuade States to adopt them. Unfortunately, the final legislation attempted to coerce States into adopting them.

While the goal of the legislation may have been desirable, the tactics are objectionable. In essence we are going to force States which do not adopt mandatory helmet and seatbelt laws to waste—waste—money, money that neither they nor we have. To the extent that the law now requires spending on "education" above and beyond desirable and necessary levels, to the extent that the law requires States to divert spending from more critical programs and projects, to that extent we are mandating that money be wasted.

And Mr. President, we cannot afford to do that.

As I said last year, when I drive, I wear my seatbelt; and if I rode a motorcycle, I would wear a helmet. But we all know that, as a Federal Government, we do not have the right or the ability to require States to pass the laws we might like to see in these areas. The Senate version of the legislation, while problematic, at least was acceptable because it sought to persuade States to move in a certain direction; current law coerces them. And that is unacceptable.

Again, I am delighted to join with Senator DURENBERGER in this effort. I congratulate him on his leadership and I look forward to working with him and our colleagues as we seek to find an acceptable way to resolve this problem.●

By Mr. LEAHY (for himself, Ms. MIKULSKI, Mr. ADAMS, and Mr. D'AMATO):

S. 2205. A bill to amend the Public Health Service Act to provide for the establishment or support by States of registries regarding cancer, to provide for a study regarding the elevated rate of mortality for breast cancer in certain States, and for other purposes; to the Committee on Labor and Human Resources.

CANCER REGISTRIES AMENDMENT ACT

Mr. LEAHY. Mr. President, today I am introducing legislation to bolster this Nation's campaign against cancer.

Breast cancer is killing our mothers and daughters. Every 3 minutes another American woman will be diagnosed with the disease. Every 12 minutes, another woman in this country will die.

Despite decades of research and experimentation, there is still no certain cure for—or known cause of—breast cancer.

It is time to wage war on this disease and declare breast cancer a public health emergency. The resolution I am introducing today, along with Senator ADAMS, urges the Secretary of Health and Human Services to make this emergency declaration, and speed up the investigation into the cause, treatment and prevention of the disease.

Mr. President, I am also introducing a bill to create cancer registries in every State. I am pleased to be joined by Senators MIKULSKI, ADAMS, and D'AMATO in this effort.

My friend from Vermont, Congressman BERNARD SANDERS, spent countless hours developing this legislation and is introducing a companion bill in the House today.

The registries established in our bill will collect demographic data for every incidence of cancer and provide a nationwide data base to allow researchers to track cancer rates and focus on prevention.

Cancer researchers at the National Cancer Institute and State health department officials tell us accurate, uniformly defined and collected information on all cancers in all States is absolutely essential to their research and prevention efforts.

In the absence of a cure, prevention and early detection are our best hopes in the fight against cancer. This bill gives cancer patients a fighting chance.

Cancer, especially breast cancer, knows no bounds. But breast cancer hits women in Vermont, the Northeast and in the mid-Atlantic region with particular harshness. Researchers cannot explain why.

Our bill calls for a study of breast cancer in the nine States—and the District of Columbia—that lead the country in breast cancer mortality rates. The States are Vermont, Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, and Rhode Island.

Today there are things we can do to improve the lives of millions of Americans. The three steps I have outlined today will take us toward that goal.

Mr. President, I ask unanimous consent that the resolution and the bill be printed in the RECORD. I also ask unanimous consent that a summary of the cancer registry bill and a letter from the American Cancer Society in support 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. 2205

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 "Cancer Registries Amendment Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) cancer control efforts, including prevention and early detection, are best addressed locally by State health departments that can identify unique needs;

(2) cancer control programs and existing statewide population-based cancer registries have identified cancer incidence and cancer mortality rates that indicate the burden of cancer for Americans is substantial and varies widely by geographic location and by ethnicity;

(3) statewide cancer incidence and cancer mortality data, can be used to identify cancer trends, patterns, and variation for directing cancer control intervention;

(4) the American Association of Central Cancer Registries (AACCR) cites that of the 50 States, approximately 38 have established cancer registries, many are not statewide and 10 have no cancer registry; and

(5) AACCR also cites that of the 50 States, 39 collect data on less than 100 percent of their population, and less than half have adequate resources for insuring minimum standards for quality and for completeness of case information.

(b) PURPOSE.—It is the purpose of this Act to establish a national program of cancer registries.

SEC. 2. ESTABLISHMENT OF A NATIONAL PROGRAM OF CANCER REGISTRIES.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.), as amended by section

101 of Public Law 101-616, is amended by adding at the end the following new part:

"PART M—NATIONAL PROGRAM OF CANCER REGISTRIES

"SEC. 399B. NATIONAL PROGRAM OF CANCER REGISTRIES.

"(a) IN GENERAL.—The Secretary may make grants to States, or may make grants or enter into contracts with academic or non-profit organizations designated by the State to operate the State's cancer registry in lieu of making a grant directly to the State, to support the operation of population-based, statewide cancer registries in order to collect, for each form of in-situ and invasive cancer with the exception of basal cell and squamous cell carcinoma of the skin, data concerning—

"(1) demographic information about each case of cancer;

"(2) administrative information, including date of diagnosis and source of information;

"(3) pathological data characterizing the cancer, including the cancer site, stage of disease (Staging Guide), incidence, and type of treatment; and

"(4) other elements determined appropriate by the Secretary.

"(b) MATCHING FUNDS.—

"(1) IN GENERAL.—The Secretary may make a grant under subsection (a) only if the State involved agrees, with respect to the costs of the program to be carried out by the State pursuant to such subsection, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 25 percent of such costs or $1 dollar for every $3 of Federal funds provided in the grant.

"(2) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION; MAINTENANCE OF EFFORT.—

"(A) Non-Federal contributions required in paragraph (1) 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 contributions.

"(B) With respect to a State in which the purpose described in subsection (a) is to be carried out, the Secretary, in making a determination of the amount of non-Federal contributions provided under paragraph (1), may include only such contributions as are in excess of the average amount of such contributions made by the State toward the collection of data on cancer for the 2-year period preceding the first fiscal year for which a grant under subsection (a) is made with respect to the State. State contributions towards cancer control prevention services made during fiscal year 1992 shall be included in satisfying the State matching requirement for the initial fiscal year during which this section is in effect.

"(c) ELIGIBILITY FOR GRANTS.—

"(1) IN GENERAL.—No grant shall be made by the Secretary under subsection (a) unless an application therefore has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such a manner, and be accompanied by such information, as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and in accordance with the requirements of this section, and that the application will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under subsection (a) of this section.

"(2) ASSURANCES.—Each applicant, prior to receiving Federal funds under subsection (a), shall provide assurances satisfactory to the Secretary that the applicant will—

"(A) provide for the establishment of a statewide population-based cancer registry by the State health department, or by one or more academic health centers, nonprofit cancer research and prevention organizations, or medical societies acting in collaboration with the State health department;

"(B) comply with appropriate standards of completeness, timeliness, and quality or population-based cancer registry data;

"(C) provide for the annual publication of reports of cancer data under subsection (a); and

"(D) provide for the authorization under State law of the statewide cancer registry, including—

"(i) a means to assure complete reporting of cancer cases (as described in subsection (a)) to the statewide cancer registry by hospitals or other facilities providing screening, diagnostic or therapeutic services to patients;

"(ii) a means to assure the complete reporting of cancer cases (as defined in subsection (a)) to the statewide cancer registry by physicians, surgeons, and all other health care practitioners diagnosing or providing treatment for cancer patients, except for cases directly referred to or previously admitted to a hospital or other facility providing screening, diagnostic or therapeutic services to patients in that State and reported by those facilities;

"(iii) a means for the statewide cancer registry to access all records of physicians and surgeons, hospitals, outpatient clinics, nursing homes, and all other facilities, individuals, or agencies providing screening, diagnostic or therapeutic services to patients which would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or medical status of any identified patient;

"(iv) the reporting of cancer case data to the statewide cancer registry in such a format, with such data elements, and in accordance with such standards of quality timeliness and completeness, as may be established by the Secretary;

"(v) the protection of the confidentiality of all cancer case data reported to the statewide cancer registry, including a prohibition on disclosure to any person of information report to the statewide cancer registry that identifies, or could lead to the identification of, an individual cancer patient, except for disclosure to other States cancer registries and local and State health officers;

"(vi) the promulgation of regulations under which confidential case data may be disclosed to cancer researchers for the purposes of cancer prevention, control and research;

"(vii) the authorization or the conduct, by the statewide cancer registry or other persons and organizations, of studies utilizing statewide cancer registry data, including studies of the sources and causes of cancer, evaluations of the cost, quality, efficacy, and appropriateness of diagnostic, therapeutic, rehabilitative, and preventative services and programs relating to cancer, and any other clinical, epidemiological, or other cancer research; and

"(viii) protection for individuals complying with the law, specifically that no person shall be held liable in any civil action with respect to a cancer case report provided to the statewide cancer registry, or with respect to access to cancer case information provided to the statewide cancer registry.

"(d) RELATIONSHIP TO CERTAIN PROGRAMS.—This section may not be construed as requiring the Secretary to modify or terminate the program carried out by the Director of the National Cancer Institute and designated by such Director as the Surveillance, Epidemiology, and End Results Program (SEER). Where both programs exist, the Secretary shall ensure that SEER support is not supplanted and that any additional activities are consistent with the guidelines provided for in subsection (c)(2)(C) and (D). The Secretary may not transfer administration responsibility for such SEER program from such Director.

"(e) REQUIREMENT REGARDING CERTAIN STUDY ON BREAST CANCER.—In the case of a grant under subsection (a) to any State specified in section 399D(a)(2), the Secretary may establish such conditions regarding the receipt of the grant as the Secretary determines are necessary to facilitate the collection of data for the study carried out under section 399C.

"SEC. 399C. PLANNING GRANTS REGARDING REGISTRIES.

"(a) IN GENERAL.—

"(1) STATES.—The Secretary may make grants to States for the purpose of developing plans that meet the assurances required by the Secretary under section 399B(c)(2).

"(2) OTHER ENTITIES.—For the purpose described in paragraph (1), the Secretary may make grants to public entities other than States and to nonprofit private entities. Such a grant may be made to an entity only if the State in which the purpose is to be carried out has certified that the State approves the entity as qualified to carry out the purpose.

"(b) APPLICATION.—The Secretary may make a grant under subsection (a) only if an application for the grant is submitted to the Secretary, the application contains the certification required in subsection (a)(2) (if the application is for a grant under such subsection), and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(c) FUNDING.—Of the amounts appropriated under section 399F for a fiscal year, the Secretary may obligate not more than 25 percent for carrying out this section.

"SEC. 399D. STUDY IN CERTAIN STATES TO DETERMINE THE FACTORS CONTRIBUTING TO THE ELEVATED BREAST CANCER MORTALITY RATES.

"(a) FINDING.—

"(1) IN GENERAL.—Congress finds that the Director of the National Cancer Institute has determined that the rates of mortality for breast cancer in the States specified in paragraph (2) are elevated compared to rates in other States.

"(2) RELEVANT STATES.—The States referred to in paragraph (1) are Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and the District of Columbia.

"(b) STUDY TO DETERMINE THE FACTORS CONTRIBUTING TO ELEVATED MORTALITY RATES.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Secretary shall conduct a study for the purpose of determining factors contributing to the determination described in subsection (a) with respect to the States.

"(2) COOPERATION OF STATE.—The Secretary may conduct a study required in paragraph (1) in a State only if the State agrees to cooperate with the Secretary in the conduct of the study, including providing information from any registry operated by the State pursuant to section 399B(a).

"(3) PLANNING, COMMENCEMENT, AND DURATION.—The Secretary shall, during each of the fiscal years 1993 and 1994, develop a plan for conducting the study required in paragraph (1). The study shall be initiated by the Secretary not later than fiscal year 1994, and the collection of data under the study may continue through fiscal year 1998.

"(4) REPORT.—Not later than September 30, 1999, the Secretary shall complete the study required in paragraph (1) and submit to the appropriate committees of Congress the findings and recommendations made as a result of the study.

"(5) DEFINITION.—As used in this subsection, the term 'relevant State' means a State specified in subsection (a)(2).

"SEC. 399E. TECHNICAL ASSISTANCE IN OPERATIONS OF STATEWIDE CANCER REGISTRIES.

"The Secretary may, directly or through grants and contracts, or both, provide technical assistance to the States in the establishment and operation of statewide registries, including assistance in the development of model legislation for statewide cancer registries and assistance in establishing a computerized reporting and data processing system.

"SEC. 399F. AUTHORIZATION OF APPROPRIATIONS.

"(a) REGISTRIES.—For the purpose of carrying out this part, there are authorized to be appropriated $30,000,000 for each of fiscal years 1993 through 1999, not more than 10 percent of which may be expended for assessing the accuracy, completeness and quality of data collected, and not more than 10 percent of which is to be expended under subsection 399E.

"(b) BREAST CANCER STUDY.—For the purpose of carrying out section 399D, the Secretary shall submit to the appropriate committees of Congress, a 5-year study plan and budget for each of fiscal years 1994 through 1999.".

THE CANCER REGISTRIES AMENDMENT ACT OF 1992

Amends the Public Health Service Act to provide for the creation of cancer registries in every state. The registries will collect demographic data for each incidence of cancer, providing a nationwide data base to allow researchers to track cancer rates and focus on prevention. The bill also calls for a study of the elevated breast cancer mortality rates in the Northeastern and Mid-Atlantic States.

Grants to States—HHS Secretary makes grants to States for the purpose of operating registries of individuals with cancer in order to collect, for each form of cancer, data on:

a. demographic information about each case of cancer,

b. administrative information, including date of diagnosis and source of information,

c. pathological data characterizing the cancer, including the cancer site, stage of disease (Staging Guide), incidence, type of treatment, and

d. other elements the Secretary deems appropriate.

Matching Funds—A three to one match (25 percent contribution from the States). A certain percent of this money is alloted for quality control and administration. Current State cancer control prevention service dollars can count as State match.

Planning Grants—The Secretary also can make grants to States for the purpose of planning for enabling registry legislation and compliance with eligibility for registry grants.

Utility of Data—The Secretary shall issue guidelines for the collection and presentation of data for the registry, and require procedures to ensure the completeness and accuracy of reporting by the registries.

Population-based Data—The Secretary shall require that, to the extent practicable, data collected for the registry be collected on all cases of cancer occurring in populations defined by the Secretary.

Consideration of Relevant State Laws—grants will only be made if the law of the State involved facilitates the collection of data for the registry, and if the law of the State will maintain the confidentiality of information contained in the registry. Those States that do not meet eligibility requirement can apply for planning grants.

Study of Elevated Breast Cancer Mortality Rates in the Northeast and Mid-Atlantic Regions—The Secretary shall make grants available to Relevant States to facilitate the collection of data to conduct a study of the elevated age-adjusted breast cancer mortality rates in: Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and the District of Columbia.

Authorization of Appropriations—$30 million per year.

AMERICAN CANCER SOCIETY,
Washington, DC, February 4, 1992.

Hon. PATRICK LEAHY,
Russell Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: For more than 40 years, the American Cancer Society has been actively engaged in supporting the development of complete, population-based cancer incidence registries in the United States. They are valuable to our research efforts as well as assuring high quality care for the cancer patient. Although much progress has been made in many parts of the country in developing such registries, case incidence reporting is still incomplete. Much work remains to achieve acceptable standards for data uniformity and accuracy for the country as a whole. In the absence of full incidence reporting, we continue to rely largely on mortality statistics for information regarding trends in cancer occurrence.

"The Cancer Registries Amendment Act of 1992" represents a significant step towards fulfilling this important cancer control goal. Through the support of state health departments and affiliated organizations in the process of developing cancer incidence registries, this legislation will provide strong encouragement for population-based cancer case reporting and move us closer to the important goal of a complete national cancer registry system. Importantly, the proposed legislation addresses the necessity for patient confidentiality without compromising the integrity of the system.

This initiative would also require a study to determine the factors contributing to elevated breast cancer mortality rates in certain states. Breast cancer is the most common form of cancer in the United States and the second leading cause of cancer death, and yet we do not know what causes this disease. The proposed study could be potentially useful in identifying factors that require further research.

The American Cancer Society commends you for your leadership in this area. By strengthening such cancer data resources throughout the United States, it will be increasingly possible to carry out productive investigations regarding the origins of particular cancers and the causes underlying their current trends and patterns in our population. The Society looks forward to working with you and your staff on this legislation. Please contact Kerrie Wilson at (202) 546-4011 if we can be of any assistance.

Sincerely,

WALTER LAWRENCE, Jr., M.D.,
President.

• Mr. D'AMATO. Mr. President, I rise today to join my distinguished colleague, Senator LEAHY, in introducing the Cancer Registries Amendment Act of 1992. This legislation will help ensure that we have accurate information in our efforts to fight a disease that kills hundreds of thousands of Americans each year.

The American Cancer Society estimates that over 1 million Americans will be diagnosed with cancer in 1992. Among these new cases will be 181,000 cases of breast cancer, 168,000 cases of lung cancer, and 132,000 cases of prostate cancer. The Cancer Society estimates that in 1992, cancer will claim 520,000 lives.

Accurate, reliable data is critical to our efforts to wage an effective campaign against this devastating disease. Unfortunately, in our Nation today, we have no uniform system of statewide cancer registries to collect this data. As a result, there is no way of knowing exactly how many new cases of cancer are diagnosed each year.

Our bill would correct this problem by amending the Public Health Service Act to provide for the creation of cancer registries in every State. By enabling all States to collect demographic data on each incidence of cancer, as well as pathological data pertaining to the cancer site, stage of disease, and type of treatment, our legislation will give researchers the tools they need to track cancer rates and to develop appropriate prevention strategies.

In addition, this legislation responds to the growing concerns about unusually high breast cancer incidence rates in the Northeast and Mid-Atlantic regions. My home State of New York, for example, has an overall breast cancer incidence rate that is among the highest in the Nation—with this disease afflicting more than one in nine women in several New York communities. Women deserve answers about the causes of the high breast cancer rates in these regions. By establishing a new program of grants to States for the study of these elevated rates, our bill will help them get the information they are seeking.

Mr. President, this is desperately needed legislation. While New York has had a cancer registry in place since 1976, there are currently 19 States that have no statewide cancer registry. We must correct this deficiency if we are to conduct a serious war on cancer in

this country. This legislation would do that. I therefore encourage its immediate adoption.●

By Mr. KASTEN:

S. 2206. A bill to amend the Internal Revenue Code of 1986 and title II of the Social Security Act to expand the social security exemption for election officials and election workers employed by State and local governments; to the Committee on Finance.

SOCIAL SECURITY EXEMPTION FOR ELECTION OFFICIALS AND ELECTION WORKERS

● Mr. KASTEN. Mr. President, today I am pleased to introduce legislation to alleviate the Social Security tax burden on election officials and election day workers employed by State and local governments. This legislation would expand the Social Security exemption for election day pollworkers from $100 a year to $500 a year.

The majority of poll workers are senior citizens, presently receiving their Social Security benefits, and generally opposed to paying Social Security taxes on the wages earned on election day.

Poll workers often exceed $100 in yearly wages. Introduction of legislation to expand the Social Security exemption from $100 to $500 would free State and local governments from additional and costly administrative paperwork. Poll workers do not wish to have payroll taxes withheld on such small amounts of money because they receive only a minuscule increase in their Social Security benefits as a result of this taxation.

Clearly, Congress intended to exempt the earnings of election day workers from Social Security taxes due to the economic and bureaucratic burden the taxes would place on workers. In order for this exemption to be meaningful it should be raised from $100 to $500.

I ask unanimous consent that the text of my legislation be printed in the RECORD following my remarks and that the letters and resolutions from towns and cities in Wisconsin supporting this legislation also be printed in the RECORD.

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

S. 2206

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXPANSION OF SOCIAL SECURITY EXEMPTION FOR ELECTION OFFICIALS AND ELECTION WORKERS EMPLOYED BY STATE AND LOCAL GOVERNMENTS.

(a) EXEMPTION FROM FICA TAXES.—

(1) OASDI TAX.—Clause (iv) of section 3121(b)(7)(F) of the Internal Revenue Code of 1986 (relating to treatment of State and local employment) is amended by striking "$100" and inserting "$500".

(2) HI TAX.—Subclause (V) of section 3121(u)(2)(B)(ii) of such Code (relating to treatment of State and local employment) is amended by striking "$100" and inserting "$500".

(b) EXCLUSION OF EXEMPTED SERVICE FROM COMPUTATION OF SOCIAL SECURITY BENEFITS.—

(1) OASDI BENEFITS.—Clause (iv) of section 210(a)(7)(F) of the Social Security Act (42 U.S.C. 410(a)(7)(F)(iv)) is amended by striking "$100" and inserting "$500".

(2) HI BENEFITS.—Subparagraph (E) of section 210(p)(2) of such Act (42 U.S.C. 410(p)(2)(E)) is amended by striking "$100" and inserting "$500".

(c) AUTHORITY FOR STATES TO MODIFY COVERAGE AGREEMENTS WITH RESPECT TO ELECTION OFFICIALS AND ELECTION WORKERS.—Section 218(c)(8) (42 U.S.C. 418(c)(8)) is amended—

(1) by striking "January 1, 1968" and inserting "January 1, 1992"; and

(2) by striking "$100" and inserting "$500".

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to service performed on or after January 1, 1992, without regard to the second sentence of section 218(c)(8) of the Social Security Act.

TOWN OF MADISON,
Madison, WI, August 27, 1991.

Hon. Robert W. Kasten, Jr.,
Hart Senate Office Building,
Washington, DC.

DEAR MR. KASTEN: The Town of Madison Board of Supervisors approved a resolution which supports the removal of social security taxes from election workers pay. This resolution was approved at the regular Town Board meeting held on Monday, August 26, 1991. Please find enclosed a copy for your review.

The removal of social security taxes would eliminate a hardship on senior citizens and retired people who serve as our election workers. It would also free our office from extra election records management.

Please support our position in this matter. It is very important to us.

Thank you very much.

Very truly yours,

RUTH M. AHLSTROM,
Deputy Clerk.

RESOLUTION

Whereas, a provision in the Omnibus Budget Bill of the 1st Session of the 101st Congress requires all election day workers earning more than $100 annually to be covered by Social Security as of July 1, 1991; and

Whereas, municipalities hire the vast majority of poll workers from the senior population to work on days of election at modest wages and who work only a few days a year, however, these workers generally earn more than $100 annually; and

Whereas, it is perceived that the Omnibus Budget Bill would impose a hardship on the senior/retired population working as poll workers; and

Whereas, this Social Security requirement will generate extraordinary records management for election officials in tracking the $100 annual maximum and

Whereas, even more importantly, this requirement will impose an unfair burden, both economic and bureaucratic, on the civic-minded, often senior/retired people who work at the polls; and

Whereas, a bill (HR1771) has been introduced to amend Internal Revenue Code of 1986 to delete the $100 requirement and insert $500: Now, therefore, be it

Resolved, That the Town of Madison supports HR1771 expanding the Social Security exemption for election workers from $100 to $500.

CITY OF MADISON,
Madison, WI, September 6, 1991.

Re: Social Security Exemption for Election Workers (H.R. 1771)

Hon. ROBERT W. KASTEN, Jr.,
U.S. Senator, Hart Senate Office Bldg., Washington, DC.

DEAR MR. KASTEN: The Common Council of the City of Madison, Wisconsin, adopted a Resolution which affirms the city's support of Expanding the Social Security Exemption for Election Workers from $100 to $500, and requests its Congressional delegation to vote in favor of HR1771.

A certified copy of the Resolution 48,172, ID Number 9688, adopted by the Madison Common Council on September 3, 1991, is enclosed.

Sincerely,

ANDRE BLUM,
City Clerk.

RESOLUTION—COMMON COUNCIL OF THE CITY OF MADISON, WI

Whereas, a provision in the Omnibus Budget Bill of the 1st Session of the 101st Congress requires all election day workers earning more than $100 annually to be covered by Social Security as of July 1, 1991; and

Whereas, municipalities hire the vast majority of poll workers from the senior population to work on days of election at modest wages and who work only a few days a year, however, these workers generally earn more than $100 annually, and

Whereas, it is perceived that the Omnibus Budget Bill would impose a hardship on the senior/retired population working as poll workers; and

Whereas, this Social Security requirement will generate extraordinary records management for election officials in tracking the $100 annual maximum; and

Whereas, even more importantly, this requirement will impose an unfair burden, both economic and bureaucratic, on the civic-minded, often senior/retired people who work at the polls; and

Whereas, a bill (H.R. 1771) has been introduced to amend Internal Revenue Code of 1986 to delete the $100 requirement and insert $500: Now, therefore, be it

Resolved, that the Common Council of the City of Madison supports HR1771 expanding the Social Security Exemption for election workers from $100 to $500, and requests its Congressional delegation to vote in favor of HR1771.

TOWN OF WAUPACA,
Waupaca, WI, November 6, 1991.

Senator ROBERT KASTEN, Jr.,
Hart Senate Building,
Washington, DC.

DEAR SENATOR KASTEN: We the Town Board (Dale Bonekowske, Elwood Eisentrauta, Allen Abzahamson) of the Town of Waupaca Wisconsin would like to go on record favoring legislation to raise the limit for the amount of wages paid election workers must participate in Social Security. Currently it is $100 in a calendar year. This has created additional paperwork and costs for our municipality—this we don't need! The population of our town is 1,115 so you can see we are small.

There is currently a bill S. 1354 introduced by Senator Harkin, D, Iowa that would raise the exemption for election workers from $100 to $1,000.

We would appreciate your consideration of this matter.

Thank you.

Yours truly,

GLEN SOSINSKE,
Clerk.

By Mr. DODD (for himself, Mr. GARN, Mr. SANFORD, Mr. KERRY, and Mr. D'AMATO):

S. 2207. A bill to provide for interstate banking and branching; to the Committee on Banking, Housing, and Urban Affairs.

INTERSTATE BANKING AND BRANCHING ACT

• Mr. DODD. Mr. President, I rise today to introduce the Interstate Banking and Branching Act of 1992. I am pleased to be joined in this effort by the distinguished ranking member of the Senate Banking Committee, Senator GARN, as well as by Senators SANFORD, KERRY, and D'AMATO.

Interstate banking is one element of a four-part strategy I believe is necessary to attack the credit crunch that plagues Connecticut and the rest of the Nation. In the short run, the interstate banking bill I am introducing today would empower States to allow banks with money to move more easily into credit-starved regions.

In the long run, full interstate banking would also make for stronger and healthier banks. Interstate branching enables multistate banks to become more profitable by streamlining their legal structure. It also promotes stability by enabling them to diversify their lending across wide geographic areas.

In addition to enactment of interstate banking legislation, my four-part strategy calls on regulators to use open bank assistance to infuse capital into banks that are temporarily troubled, but are viable in the long run.

It also calls for enactment of the Small Business Recovery Act to encourage more private capital to stand behind banks.

Finally, it calls on Federal regulators to take a balanced view in their bank examinations, to avoid exacerbating the credit crunch.

Some may disagree with one or two of these prescriptions. But I hope we all do agree that the credit crunch is a serious malady, and must be addressed if the economy is to recover.

In Connecticut, people are hurting right now. The troubles that face them are the same troubles that now face the rest of the Nation—but in larger, bolder headlines.

In 1991, Connecticut's combined rate of business and personal bankruptcies was the highest in the Nation.

Consumer confidence plummeted to alarmingly low levels.

Unemployment is now 7.3 percent, its highest rate since 1983.

The number of jobs lost in our State since the recession began has now surged past 100,000.

During 1991, 20 financial institutions failed in Connecticut. Over the past 2 years, we've lost $1 billion of bank capital.

In all, Connecticut's recession is now in its 34th month. It is the longest downturn since the 1930's. Given it's depth and duration, it's no wonder that many in Connecticut now refer to it as a depression.

Mr. President, all of us in Connecticut want to pull ourselves out of these terrible times. We want to work together to lift our State—inch by inch and day by day—out of its current troubles. But Connecticut, like the rest of the country, is hobbled—because our banks aren't lending.

In Connecticut and across the country, the keys to economic recovery are small businesses. They are now, and they have always been, the engines of innovation and growth and job creation.

These engines need fuel, however, to chug and churn and get us moving forward again.

Credit is their lifeblood. Without it, small businesses are stuck in reverse. They can't grow. They can't innovate. They can't create jobs. Often, without a steady supply of credit, they go bankrupt.

This is why the current credit crunch casts such a pall over Connecticut and our Nation right now. This is why it dims our chances for recovery. Small businesses don't get capital by selling junk bonds on Wall Street. They get it through loans from local banks.

Consider the case of Joe Mainiero. He owns a successful perimeter security business in Waterbury, CT.

In 1990, he won a Federal contract to supply his product to the Bureau of Prisons. But his bank wouldn't give him a loan to fill the order. He had to cancel the contract. To add insult to injury, he paid the Federal Government a penalty for the cancellation.

Or consider David Turnquist. His company makes laboratory equipment used in university and industrial research. He sells to the Federal Government and to foreign firms. He employs 14 people, and would expand and hire more, if only he could get a loan. But he can't.

Mr. President, until entrepreneurs like Joe Mainiero and David Turnquist can get the credit they need, our economy will continue to be stuck in reverse.

By acting decisively, however, we can help ease the credit squeeze.

Last year, I and others pushed for open bank assistance and the Small Business Recovery Act. We generated movement on interstate banking. And we demanded an end to regulatory overkill. For most part, however, our pleas fell upon deaf ears at the White House.

As a result, we could only pass a sense-of-the-Congress resolution that the banking regulators should use open bank assistance.

Let me, if I may, talk briefly about that measure.

When it uses open bank assistance, the FDIC intervenes long before a bank is brain-dead. It invests money in carefully selected banks that are temporarily troubled, but viable in the long run.

In so doing, it strengthens a bank's balance sheet, and enables the bank to make loans again—which is a win for all concerned. For the FDIC, it's cheaper in many cases to intervene and prevent a bank failure than it is to bail out the depositors after the bank fails.

For the bank's community, the economic outlook improves the longer the bank has the capacity to extend credit.

There are historical precedents for using open bank assistance. During the Great Depression, the Reconstruction Finance Corporation used open bank assistance to aid more than half the banks in the country—and made a profit in the process.

In the half-century since, open bank assistance has been used in the Continental Illinois case and elsewhere. When properly employed, the result has been a record of success similar to the RFC's.

Open bank assistance can help alleviate the credit crunch. Now that Congress has made its position clear, I hope the regulators will put their mandate to use.

As for the other three initiatives, we are back to try again this year.

We're looking at possible modifications of the Small Business Recovery Act, for example.

SBRA was developed by a Waterbury banker. It harnesses the Small Business Administration's expertise helping small businesses and puts it to use rebuilding small banks.

Specifically, SBRA authorizes the SBA to guarantee the purchase of small amounts of stock in local banks. This would spur renewed investment in banks, which in turn would give banks the wherewithal to make loans once again.

Unfortunately, we ran into immovable objects last year when we sought to attach SBRA to a broader banking bill on the Senate floor. The Bush administration and the Small Business Administration in particular never gave this proposal the serious consideration it deserved.

We also continue our efforts to ease overzealous bank regulation.

Over the past 2 years, we've heard of case after case in which regulators are unreasonably tough in evaluating loans. They're engendering a climate of fear among lenders which makes them hesitant to lend to even the most creditworthy of borrowers.

We don't want examiners to abandon their standards. But we do want them to use greater care in evaluating loans. We want them to give every consideration to innovative proposals for restructuring loans to help both borrowers and lenders through the current hard times.

The head honchos at the banking agencies here in Washington have issued directives and held pow-wows on

this point. But there's still reason to doubt that the message is getting through. Somehow, some way, it's being lost in transmission between Washington and the real world.

That must not stand. The climate of fear that grips lenders must be broken.

Mr. President, finally, let me talk about the bill I am introducing today.

In simple terms, this legislation is patterned on the interstate component of the bill the Senate Banking Committee reported last year to the full Senate.

One year after date of enactment, a bank holding company could acquire a bank across State lines anywhere in the country.

Eighteen months after enactment, a bank holding company operating subsidiaries across State lines could consolidate them into a single bank.

Three years after enactment banks would be able to branch interstate nationwide.

States are allowed to opt out of branching if they choose—but banks located in States that do are not then themselves permitted to branch interstate.

For areas afflicted by a credit crunch, this bill offers both short-term and long-term solutions.

In the short term, it would allow a State to opt in on interstate branching on the bill's date of enactment. States would no longer be prohibited by Federal law from opening their borders to all comers with the money to make loans. Certainly in the current climate, new lenders would be manna from heaven.

In the long-term, however, full interstate banking will help to prevent future credit crunches by making way for stronger, healthier banks.

For starters, current law requires bank holding companies operating across State lines to create a separate bank in each State.

This results in costly and unnecessary duplication. A bank holding company must submit separate filings for each of its banks. Each subsidiary bank in each State must have a separate board of directors. And then there are the duplicate legal fees.

By allowing holding companies to streamline their operations, and combine them into a single bank, we're enabling banks to stop paying the lawyers, and start making loans.

The savings for banks could be substantial. Noted banking consultant Lowell Bryan has estimated that the full consolidation of duplicate activities could save as much as $10 billion annually. Even if half those savings were realized, it would be significant.

Interstate banking will also enable banks to diversify their loan portfolios across wider geographic areas. This will help avoid repeating the mistakes of the past.

In the Southwest, banks and thrifts were closely tied to the economies of that region. When times were good, these institutions made a mint. But when the bottom fell out of energy prices during the 1980's, Federal regulators ended up harvesting a bumper crop of failed banks and thrifts.

With interstate banking, a bank can spread its lending across wider geographic areas, and avoid being inextricably linked to a single regional economy. It would be better able to survive localized economic downturns.

Setting up a presence in several States also enables a bank to rely more heavily on retail deposits for sources of funds than it otherwise could. These retail deposits are stable and low-cost—particularly relative to the brokered deposit market.

A bank that relies on retail deposits need not gamble to make a profit. Rather than engage in chancy real estate speculation or loans to third world countries, it can stick to the knitting—and still show a strong bottom line.

Finally, interstate banking allows banks new opportunities for profits.

The current Federal laws delineating what banks can and can't do were largely written in the 1930s. The world has changed remarkably since then.

Auto dealers and retailers now own savings and loans. Many commercial firms have set up finance companies. Securities firms offer a variety of banking services.

The result: nowadays, if you're a retailer, you can be a bank. If your an automaker, you can be a bank. If you're a securities firm, you can be a bank. But if you're a bank, you can't be a retailer or an automaker or a securities firm. All you can be is a bank.

Restrictions on interstate banking and branching is like rubbing salt on the wounds. Not only is the product line of a bank limited; so is its market area. In general, it can't both take deposits and make loans across State lines.

Frankly, Mr. President, I think banks should be allowed to affiliate with securities firms. These are synergies from enabling the same company to both make loans and offer investment banking services. Moreover, I believe it is possible to build in the kind of firewalls needed to protect the insured portion of the bank from these riskier activities.

In addition, I think we also need to close loopholes with respect to insurance agency activities. I think it is important that we address this issue this year.

In closing, I would note that I don't pretend to have all the answers to the credit crunch. I'd certainly welcome proposals that others bring forward. I think this is one problem that would benefit from a collective effort by creative minds.

But it's imperative that we do something fast. People are hurting out there. They don't expect us to wave a magic wand and cure every economic ill. But they do expect us to roll up our sleeves and take positive steps to help.

The four-point program I've outlined would help. More reasonable regulation would diminish the climate of fear that grips bankers. Open Bank Assistance and the Small Business Recovery Act can give some banks the shot in the arm they need to recover and start making loans again.

Interstate banking in the short term offers States a way to attract new lenders. In the long run, it should make for stronger banks.

Mr. President, we worked hard on interstate banking legislation last year. We passed a broad banking package in the Senate that included an interstate banking component. In the House, an interstate banking bill came within 19 votes of passing.

I think we are too close to give up now. The crest of the hill is in sight. With a little more sweat and toil, we can push this effort over the top.

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. 2207

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 "Interstate Banking and Branching Act of 1992".

SEC. 2. INTERSTATE BANKING.

(a) IN GENERAL.—Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)) is amended—

(1) by striking "(d) Notwithstanding any other provision of this section, no" and inserting the following:

"(d) STATE BOUNDARIES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no"; and

(2) by adding at the end the following:

"(2) APPROVALS AUTHORIZED.—

"(A) ACQUISITION OF EXISTING BANKS.—Beginning 1 year after the date of enactment of the Interstate Banking and Branching Act of 1992, the Board may approve an application under this section which will permit a bank holding company that is adequately capitalized and adequately managed, or a subsidiary thereof, to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of a bank located outside the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on July 1, 1966, or the date on which such company became a bank holding company, whichever is later.

"(B) ESTABLISHMENT OF NEW BANKS.—Beginning 2 years after the date of enactment of the Interstate Banking and Branching Act of 1992, the Board may approve an application under this section which will permit a bank holding company that is adequately capitalized and adequately managed, or a subsidiary thereof, to charter and acquire any voting shares of, interest in, or all or substantially all of the assets of any new bank to be located outside the State in

which the operations of such bank holding company's banking subsidiaries were principally conducted on July 1, 1966, or the date on which such company became a bank holding company, whichever is later.

"(C) 'NEW BANK' EXCEPTION.—For purposes of this paragraph, a bank that does not open for business and has been chartered solely for the purpose of acquiring all or substantially all of the assets of an existing bank shall not be deemed to be a new bank.

"(3) CONCENTRATION LIMITS.—The Board may not approve an application under paragraph (2)(A) if—

"(A) the applicant controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institution assets of the United States, as determined under regulations of the Board; or

"(B) the applicant controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the bank to be acquired is located, as determined under regulations of the Board, except that such a State may waive the applicability of this subparagraph.

Nothing in this paragraph affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State bank holding companies.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'adequately capitalized' has the same meaning as in section 38(b) of the Federal Deposit Insurance Act; and

"(B) the term 'insured depository institution' has the same meaning as in section 3 of that Act.".

(b) CONVERSION OF BANKS TO BRANCHES.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end the following new subsection:

"(h) INTERSTATE COMBINATION.—

"(1) IN GENERAL.—Beginning 18 months after the date of enactment of the Interstate Banking and Branching Act of 1992, a bank holding company having subsidiary banks located in more than 1 State may combine 2 or more of such banks into a single bank by means of merger, consolidation, or other transaction, except that a bank may not be so combined or remain so combined if it is located in a State that has elected to prohibit out-of-State banks from establishing and acquiring branches in that State. Notwithstanding the exception in the preceding sentence, a bank holding company may engage in such a combination on or after the date of enactment of this subsection if the holding company is undercapitalized and the transaction is approved as part of a capital restoration plan described in paragraph (2)(B).

"(2) APPLICABILITY.—Paragraph (1) applies only in the case of a merger, consolidation, or other transaction that is undertaken—

"(A) by a bank holding company that is adequately capitalized, as defined in section 38 of the Federal Deposit Insurance Act; or

"(B) in connection with a comprehensive capital restoration plan under section 38 of the Federal Deposit Insurance Act that contains at least 1 element in addition to the merger, consolidation, or other transaction described in paragraph (1).

"(3) INTRASTATE BRANCHING.—Nothing in paragraph (1) shall be deemed to authorize—

"(A) a national bank to operate branches at locations in a State unless a national bank having offices only in such State could operate its main office or branches at such locations; or

"(B) a State bank to operate branches at locations in a State unless a State bank having branches only in such State could operate its main office or branches at such locations.".

SEC. 3. INTERSTATE BRANCHING BY NATIONAL BANKS.

Section 5155 of the Revised Statutes (12 U.S.C. 36) is amended—

(1) by redesignating subsections (d) through (h) as subsections (e) through (i), respectively; and

(2) by inserting after subsection (c) the following:

"(d) INTERSTATE BRANCHING BY NATIONAL BANKS.—

"(1) IN GENERAL.—

"(A) APPROVALS AUTHORIZED.—Beginning 3 years after the date of enactment of the Interstate Banking and Branching Act of 1992, the Comptroller of the Currency may approve an application under this section which will permit a national bank that is adequately capitalized and adequately managed to establish or acquire and operate a branch located outside the State in which the main office of such bank is located.

"(B) CONDITIONS.—In determining whether to grant approval under subparagraph (A), the Comptroller of the Currency shall consider the bank's rating under the Community Reinvestment Act of 1977 and the views of the appropriate State bank officials regarding the bank's compliance with applicable State community reinvestment laws.

"(C) APPLICABLE LAW.—

"(i) IN GENERAL.—Any branch of a national bank that is established in accordance with this subsection shall be subject to the laws of the host State with respect to intrastate branching, consumer protection, fair lending, and community reinvestment as if it were a branch of a national bank having its main office in that State. Nothing contained in this subsection in any way affects, limits, impairs, or precludes the right of any State or political subdivision of a State to impose a nondiscriminatory franchise tax or other nonproperty tax instead of a franchise tax as provided by section 3124 of title 31, United States Code.

"(ii) FILING REQUIREMENT.—A host State may require any national bank that has its main office in another State that wishes to establish a branch within the host State to comply with filing requirements that are not discriminatory in nature and that are similar in their effect to those that are imposed on a corporation from another State that is not engaged in the business of banking and that seeks to engage in business in the host State. The host State may preclude any national bank, the main office of which is located in another State, from establishing or operating a branch within the host State if that national bank or its branch materially fails to comply with the filing requirements.

"(2) STATE ELECTION TO PROHIBIT INTERSTATE BRANCHING.—

"(A) IN GENERAL.—The provisions of paragraph (1) shall not apply to branches to be located in a State which has enacted, during the period beginning on January 1, 1990, and ending on the expiration of 3 years after the date of enactment of the Interstate Banking and Branching Act of 1992, a law that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State.

"(B) EFFECT OF PROHIBITION.—A national bank that has its main office in a State that has in effect a prohibition described in subparagraph (A) may not acquire or establish a branch located in any other State under the provisions of this subsection.

"(3) STATE ELECTION TO PERMIT INTERSTATE BRANCHING.—

"(A) DURING THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—The Comptroller of the Currency may approve an application under paragraph (1)(A) before the expiration of the 3-year period described in paragraph (1)(A), if the State in which the branch will be located enacts a law during that period expressly permitting interstate branching by all out-of-State national and State banks before the expiration of that period. A State that enacts a law described in the preceding sentence—

"(i) may prohibit interstate de novo branching during the 5-year period beginning on the date of enactment of the Interstate Banking and Branching Act of 1992;

"(ii) may require a copy of an application submitted under this section to be filed with the host State banking authority in a timely manner (and the Comptroller of the Currency shall consider any timely comments of the host State prior to approving that application); and

"(iii) may impose other conditions on an incoming branch if—

"(I) the conditions do not discriminate against out of State banks or bank holding companies; and

"(II) the imposition of the conditions is not preempted by Federal law regarding the same subject.

"(B) AFTER THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—A State that originally elects, pursuant to paragraph (2), to prohibit interstate branching may nonetheless elect at any later time to permit interstate branching if such State enacts a law expressly permitting interstate branching by all out-of-State national and State banks.

"(4) CONCENTRATION LIMITS.—

"(A) IN GENERAL.—The Comptroller of the Currency may not approve an acquisition under paragraph (1)(A) by a bank of a branch located in another State if—

"(i) the bank controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institution assets of the United States, as determined under regulations of the Board of Governors of the Federal Reserve System; or

"(ii) the bank controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the branch to be acquired is located, as determined under regulations of the Board of Governors of the Federal Reserve System, except that a State may waive the applicability of this clause.

"(B) LIMITATIONS.—Nothing in subparagraph (A)—

"(i) affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State banks or bank holding companies; or

"(ii) applies to the establishment of new branches located outside the State where the main office of the bank is located.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'adequately capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act;

"(B) the term 'host State' means the State in which a national bank establishes or maintains a branch, other than the State in which the bank has its main office and is engaging in the business of banking; and

"(C) the term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.".

SEC. 4. INTERSTATE BRANCHING BY STATE BANKS.

Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding at the end the following:

"(3) INTERSTATE BRANCHING BY STATE BANKS.—Beginning 3 years after the date of enactment of the Interstate Banking and Branching Act of 1992, an insured State bank that is adequately capitalized and adequately managed may establish or acquire and operate a branch located outside the State in which the bank is chartered if such action—

"(A) is authorized by the law of the State in which the bank is chartered; and

"(B) is not prohibited under paragraph (5) or is permitted under paragraph (6), by the host State.

"(4) APPLICABLE LAW.—

"(A) IN GENERAL.—Any branch of a State-chartered bank, that is established in accordance with this subsection shall be subject to the laws of the host State with respect to intrastate branching, consumer protection, fair lending, and community reinvestment as if it were a branch of a bank chartered under the laws of that State and having offices only in such State. Nothing contained in this subsection in any way affects, limits, impairs, or precludes the right of any State or political subdivision of a State to impose a nondiscriminatory franchise tax or other nonproperty tax instead of a franchise tax as provided by section 3124 of title 31, United States Code.

"(B) ACTIVITIES OF BRANCHES.—An insured State bank that establishes a branch or branches in accordance with paragraph (3) may not conduct any activity at such branch that is not permissible for a bank chartered by the host State.

"(C) FILING REQUIREMENT.—A host State may require any bank chartered by another State that wishes to establish a branch within the host State to comply with filing requirements that are not discriminatory in nature and that are similar in their effect to those that are imposed on a corporation from another State that is not engaged in the business of banking and that seeks to engage in business in the host State. The host State may preclude any State bank chartered by another State from establishing or operating a branch within the host State if that State bank or its branch materially fails to comply with the filing requirements.

"(D) RESERVATION OF CERTAIN RIGHTS TO STATES.—Nothing in this subsection limits in any way the right of a State to—

"(i) determine the authority of State banks chartered in that State to establish and maintain branches; or

"(ii) supervise, regulate, and examine State banks chartered by that State.

"(5) STATE ELECTION TO PROHIBIT INTERSTATE BRANCHING.—

"(A) IN GENERAL.—The provisions of paragraph (3) shall not apply to branches to be located in a State which has enacted, during the period beginning on January 1, 1990, and ending on the expiration of 3 years after the date of enactment of the Interstate Banking and Branching Act of 1992, a law that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State.

"(B) EFFECT OF PROHIBITION.—A State bank that is chartered by a State that has in effect a prohibition described in subparagraph (A) may not acquire or establish a branch located in any other State.

"(6) STATE ELECTION TO PERMIT INTERSTATE BRANCHING.—

"(A) DURING THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—A State bank may establish or acquire, and operate, a branch outside the State in which the main office of the bank is located, subject to the provisions of this subsection, before the expiration of the 3-year period described in paragraph (3), if the State in which the branch will be located enacts a law during that period expressly permitting interstate branching by all national and State banks before the expiration of that period. A State that enacts such a law—

"(i) may prohibit interstate de novo branching during the 5-year period beginning on the date of enactment of the Interstate Banking and Branching Act of 1992;

"(ii) may require a copy of an application submitted under this section to be filed with the host State banking authority in a timely manner (and the home State banking authority and the appropriate Federal banking agency shall consider any timely comments of the host State prior to approving that application); and

"(iii) may impose other conditions on an incoming branch if—

"(I) the conditions do not discriminate against out of State banks or bank holding companies; and

"(II) the imposition of the conditions is not preempted by Federal law regarding the same subject.

"(B) AFTER THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—A State that originally elects, pursuant to paragraph (5), to prohibit interstate branching may elect at any later time to permit interstate branching if such State enacts a law expressly permitting interstate branching by all national and State banks.

"(7) CONCENTRATION LIMITS.—

"(A) IN GENERAL.—Notwithstanding the provisions of this subsection, a State bank may not acquire an existing branch located in another State if—

"(i) the bank controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institution assets of the United States, as determined under regulations of the Board of Governors of the Federal Reserve System; or

"(ii) the bank controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the branch to be acquired is located, as determined under regulations of the Board of Governors of the Federal Reserve System, except that a State may waive the applicability of this clause.

"(B) LIMITATIONS.—Nothing in subparagraph (A)—

"(i) affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State bank holding companies, or

"(ii) applies to the establishment of new branches located outside the State in which the main office of the bank is located.

"(8) COORDINATION OF EXAMINATION AUTHORITY.—

"(A) IN GENERAL.—A host State bank supervisory or regulatory authority may examine a branch established in the host State by banks chartered by another State for the purpose of determining compliance with host State laws regarding banking, taxation, community reinvestment, fair lending, consumer protection, and permissible activities and to ensure that the activities of the branch are conducted in a manner consistent with sound banking principles and do not constitute a serious risk to the safety and sound operation of the branch.

"(B) ENFORCEMENT.—In the event that a host State bank authority as described in subparagraph (A) determines that there is a violation of host State law concerning the activities being conducted by the branch or that the branch is being operated in a manner not consistent with sound banking principles or in an unsafe and unsound manner, such host State bank authority may undertake such enforcement actions or proceedings as would be permitted under host State law if the branch were a bank chartered by the host State.

"(C) COOPERATIVE AGREEMENT.—The State bank authorities from 1 or more States may enter into cooperative agreements to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations.

"(D) FEDERAL REGULATORY AUTHORITY.—

"(i) IN GENERAL.—Nothing in this subsection limits in any way the authority of the appropriate Federal banking agency to examine any bank or branch of a bank for which the agency is the appropriate Federal banking agency.

"(ii) REVIEW OF INTERSTATE AGREEMENTS.—If the appropriate Federal banking agency determines that the States have failed to reach an agreement under subparagraph (C), or that such an agreement fails to adequately protect the Federal Deposit Insurance Fund, the appropriate Federal banking agency shall not defer to State examinations of the out-of-State branches.

"(9) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'host State' means the State in which a bank establishes or maintains a branch other than the State in which the bank is chartered and is engaging in the business of banking; and

"(B) the term 'adequately capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act.".

SEC. 5. COMMUNITY REINVESTMENT ACT EVALUATION OF BANKS WITH INTERSTATE BRANCHES.

(a) IN GENERAL.—Section 807 of the Community Reinvestment Act of 1977 (12 U.S.C. 2906) is amended by adding at the end the following new subsections:

"(d) INSTITUTIONS WITH INTERSTATE BRANCHES.—

"(1) STATE-BY-STATE EVALUATION.—In the case of a regulated financial institution that maintains domestic branches in 2 or more States, the appropriate Federal financial supervisory agency shall prepare—

"(A) a written evaluation of the entire institution's record of performance under this Act, as required by subsections (a), (b), and (c); and

"(B) for each State in which the institution maintains 1 or more domestic branches, a separate written evaluation of the institution's record of performance within such State under this Act, as required by subsections (a), (b), and (c).

"(2) MULTISTATE METROPOLITAN AREAS.—In the case of a regulated financial institution that maintains domestic branches in 2 or more States within a multistate metropolitan area, the appropriate Federal financial supervisory agency may prepare a separate written evaluation of the institution's record of performance within such metropolitan area under this Act, as required by subsections (a), (b), and (c). If the agency prepares a written evaluation pursuant to this paragraph, the scope of the written evaluation required under paragraph (1)(B) shall be adjusted accordingly.

"(3) STATE LEVEL EVALUATION.—A written evaluation prepared pursuant to paragraph (1)(B) shall—

"(A) include the information required by subparagraphs (A) and (B) of subsection (b)(1) separately for each metropolitan area in which the institution maintains 1 or more domestic branch offices and separately for the remainder of the nonmetropolitan area of the State if the institution maintains 1 or more domestic branch offices in such area; and

"(B) describe how the Federal financial supervisory agency has performed the examination of the institution, including a list of the individual branches examined.

"(4) DEFINITIONS.—For purposes of this section—

"(A) the term 'domestic branch' means any branch office or other facility of a regulated financial institution with the ability to accept deposits located in any State;

"(B) the term 'metropolitan area' means any primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area, as defined by the Director of the Office of Management and Budget, with a population of 250,000 or more, and any other area identified by the appropriate Federal financial supervisory agency; and

"(C) the term 'State' has the same meaning as in section 3 of the Federal Deposit Insurance Act.".

(b) SEPARATE PRESENTATION.—Section 807(b)(1) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(1)) is amended by adding at the end the following sentence: "A written evaluation shall contain the information required by subparagraphs (A) and (B) presented separately for each metropolitan area in which an insured depository institution maintains 1 or more domestic branch offices.".

SEC. 6. BRANCHING BY FOREIGN BANKS.

(a) IN GENERAL.—Section 5(a) of the International Banking Act of 1978 (12 U.S.C. 3103(a)) is amended to read as follows:

"(a) INTERSTATE BANKING OPERATIONS.—

"(1) IN GENERAL.—A foreign bank may establish and operate—

"(A) a Federal branch or agency, with the approval of the Board and the Comptroller of the Currency, in any State outside its home State to the extent that such establishment and operation would be permitted under section 5155 of the Revised Statutes for a national bank, as if the foreign bank were a national bank having its main office in the home State of the foreign bank; or

"(B) a State branch or agency, with the approval of the Board and the appropriate regulatory authority of the State, in any State outside its home State to the extent that such establishment and operation would be permitted under section 18(d) of the Federal Deposit Insurance Act for a State bank, as if the foreign bank were a State bank chartered in the home State of the foreign bank.

"(2) CRITERIA FOR DETERMINATION.—In approving an application under paragraph (1), the Board and the Comptroller of the Currency—

"(A) shall apply the standards for establishment of a foreign bank office in the United States under section 7; and

"(B) may not approve an application unless it determines that the foreign bank's financial resources, including the capital level, are equivalent to those required for a domestic bank to be approved for branching under section 5155 of the Revised Statutes and section 18(d) of the Federal Deposit Insurance Act and, in the case of the first branching application by such foreign bank, after consultation with the Secretary of the Treasury regarding capital equivalency.".

(b) TREATMENT OF UNITED STATES BANKING SUBSIDIARIES.—Section 5 of the International Banking Act of 1978 (12 U.S.C. 3103) is amended by adding at the end the following:

"(d) TREATMENT OF UNITED STATES SUBSIDIARY OF A FOREIGN BANK.—A foreign bank that has a domestic subsidiary within the United States may establish Federal and State branches and agencies outside its home State to the extent permitted under section 5155(d) of the Revised Statutes and section 18(d) of the Federal Deposit Insurance Act.".

(c) HOME STATE.—

(1) METHOD OF DETERMINING.—Section 4(h) of the International Banking Act of 1978 (12 U.S.C. 3102(h)) is amended—

(A) in paragraph (1)(A), by striking "in the State in which such branch or agency is located"; and

(B) by adding at the end the following:

"(3) HOME STATE.—For purposes of section 5155(c) of the Revised Statutes, the home State of a foreign bank shall be its home State as determined under section 5(c).".

(2) SINGLE STATE DETERMINATIONS.—Section 5(c) of the International Banking Act of 1978 (12 U.S.C. 3103(c)) is amended to read as follows:

"(c) DETERMINATION OF HOME STATE OF FOREIGN BANK.—For purposes of this section—

"(1) the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than 1 State, is the 1 of those States elected by the foreign bank, or, in default of such election, by the Board; and

"(2) the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in only one State, is that State.".

SEC. 7. USE OF NAMES IN HOST STATE.

(a) BANK HOLDING COMPANY ACT OF 1956.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), as amended by section 2, is amended by adding at the end the following:

"(h) USE OF NAMES IN HOST STATE.—

"(1) IN GENERAL.—A bank holding company that seeks, directly or indirectly, to acquire or establish a bank in a host State shall provide the Board with the name or names under which the bank will operate in the host State.

"(2) PROHIBITION AGAINST SAME OR SIMILAR NAMES.—A bank holding company may not operate a bank in a host State if the proposed name of the bank is—

"(A) identical or deceptively similar to a name being used by an existing bank or bank holding company in the host State; or

"(B) is likely to cause the public to be confused, deceived, or mistaken, due to a similarity or identity of names.

"(3) SUBSEQUENT USE OF SAME OR SIMILAR NAME.—Upon application by any person or institution that is adversely affected, the Board shall revoke permission of a bank holding company to operate a bank in a host State if the bank holding company uses or changes the name of, or uses an additional name for any of its banks in the host State, and the new or additional name is described in subparagraph (A) or (B) of paragraph (2). The preceding sentence does not preclude any adversely affected person from pursuing any available legal or administrative remedies.

"(4) DEFINITION.—For purposes of this subsection, the term 'host State' means the State in which a bank holding company establishes or acquires a bank other than the State in which the operations of the bank holding company's banking subsidiaries were principally conducted on July 1, 1996, or the date on which the company became a bank holding company, whichever is later.".

(b) NATIONAL BANKS.—Section 5155(d) of the Revised Statutes (12 U.S.C. 36(d)), as added by section 3, is amended by adding at the end the following:

"(6) USE OF NAMES IN HOST STATE.—

"(A) IN GENERAL.—A bank that seeks, directly or indirectly, to acquire or establish a branch in a host State shall provide the Comptroller of the Currency with the name or names under which the branch will operate in the host State.

"(B) PROHIBITION AGAINST SAME OR SIMILAR NAMES.—A bank may not operate a branch in a host State if the proposed name of the branch is—

"(i) identical or deceptively similar to a name being used by an existing bank or bank holding company in the host State; or

"(ii) is likely to cause the public to be confused, deceived, or mistaken, due to a similarity or identity of names.

"(C) SUBSEQUENT USE OF SAME OR SIMILAR NAME.—Upon application by any person or institution that is adversely affected, the Comptroller of the Currency shall revoke permission of a bank to operate a branch in a host State if the bank uses or changes the name of, or uses an additional name for any such branch in the host State, and the new or additional name is described in clause (i) or (ii) of subparagraph (B). The preceding sentence does not preclude any adversely affected person from pursuing any available legal or administrative remedies.

"(D) DEFINITION.—For purposes of this paragraph, the term 'host State' means the State in which a bank establishes or acquires a branch other than the State in which the bank has its main office and is engaging in the business of banking.".

(c) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)), as amended by section 4, is amended by adding at the end the following:

"(10) USE OF NAMES IN HOST STATE.—

"(A) IN GENERAL.—A bank that seeks, directly or indirectly, to acquire or establish a branch in a host State shall provide the appropriate State regulatory authority with the name or names under which the branch will operate in the host State.

"(B) PROHIBITION AGAINST SAME OR SIMILAR NAMES.—A bank may not operate a branch in a host State if the proposed name of the branch is—

"(i) identical or deceptively similar to a name being used by an existing bank or bank holding company in the host State; or

"(ii) is likely to cause the public to be confused, deceived, or mistaken, due to a similarity or identity of names.

"(C) SUBSEQUENT USE OF SAME OR SIMILAR NAME.—Upon application by any person or institution that is adversely affected, the appropriate State regulatory authority may revoke permission of a bank to operate a branch in a host State if the bank uses or changes the name of, or uses an additional name for any such branch in the host State, and the new or additional name is described in clause (i) or (ii) of subparagraph (B). The preceding sentence does not preclude any adversely affected person from pursuing any available legal or administrative remedies.

"(D) DEFINITION.—For purposes of this paragraph, the term 'host State' means the State in which a bank establishes or acquires a branch other than the State in which the bank has its main office and is engaging in the business of banking."•

• Mr. GARN. Mr. President, I join today with Senator DODD in cosponsoring his legislative proposal to permit nationwide interstate bank branching.

Last February, the administration sent Congress a comprehensive banking reform proposal that included interstate branching as a key component. Unfortunately, Congress failed to enact this reform legislation, and as a result American banks continue to labor under outmoded laws that disadvantage our financial institutions at home and abroad. In addition, the failure to address the interstate branching issue continues to saddle our banks with unnecessary costs and inefficiencies that not only impair the ability of our banks to remain strong, but also needlessly inconvenience consumers of bank services.

The McFaddan Act, the principal Federal law that restricts interstate branching by national banks, is almost 60 years old. When it was drafted, there were no computers, no satellite communications systems, and no ATM machines. Most small- and medium-sized businesses concentrated on their local markets and dealt with local financial institutions. Today, we live in a new global society, where even a small business may have multistate operations and financial needs. Computers and modern telecommunications make it possible to instantaneously communicate around the world.

Our international competitors are aware of these changes and have made corresponding changes in their financial services systems. In Europe, it will soon be possible for a bank chartered in any one of the European Community countries to open branches throughout the continent. Yet, in the United States a national bank in Maryland cannot open a branch office in Virginia. This system must be changed if we are to maintain a healthy and internationally competitive financial system.

The bill Senator DODD has drafted takes a constructive and positive approach toward modernizing our branching laws. While I fully support the goals of this legislation, I would like to see the timetable contained in the bill advanced even further. I would also like to offer some other fine tuning amendments as the Senate proceeds to consider this and other interstate banking provisions. However, I congratulate Senator DODD in coming forward with this proposal early in this session of the Congress, and look forward to working with him to seeing for its prompt consideration by the full Senate.•

• Mr. SANFORD. Mr. President, I am pleased to be a cosponsor of the Interstate Banking and Branching Act of 1992. I commend Senator DODD for introducing what I consider to be vital legislation that is needed to preserve and enhance the banking industry. I have been a longtime supporter of interstate banking and branching. I am especially pleased to see that a provision from the Bank Efficiency Act, which I introduced last spring, was included in this bill. Specifically, this provision allows banks who operate in a number of States, to consolidate and streamline their operation into branches of their home banks.

Current law permits a bank that wishes to expand into another State, when permitted by State law, to do so only by establishing a separate bank in that new State. Establishing a separate bank rather than a branch requires substantial, extended operating costs. Establishing a bank rather than a branch requires a separate board of directors, separate regulatory requirements, separate audits, separate legal fees, separate accounting systems and duplicative personnel. This is extremely cumbersome and inefficient. Costs saved through consolidation could be substantial. Some estimate it to be over $10 billion. In the recent budget proposal, the Treasury estimated the savings that considerable savings could be incurred through enactment of interstate branching legislation. This type of substantial savings can put much needed capital back into the banking system and may eventually contribute to the alleviation of the credit crunch.

I cannot express the disappointment I felt when efforts to modernize the banking industry last fall proved unsuccessful. At a time when the economy is in a tailspin and the banking industry is clearly declining, it only makes sense to enact measures that at the very least, permit banks to streamline their operations into legal structures that are efficient.

This type of commonsense proposal is a key component to my economic recovery plan. A strong economy demands a strong banking system. Interstate branching is vital to a strong banking system. I commend Senator DODD for his work, and I am proud to be a cosponsor of this important legislation. I will continue to support all measures that will allow the banking industry to be competitive and efficient.•

By Mr. PACKWOOD:

S. 2208. A bill to amend the Congressional Budget Act of 1974 to provide for truth in budgeting with respect to intragovernmental transactions involving trust funds; pursuant to the order of August 4, 1977, referred jointly to the Committee on the Budget and the Committee on Governmental Affairs.

TRUTH IN BUDGETING ACT

• Mr. PACKWOOD. Mr. President, three times Congress has passed laws to take Social Security out of the budget. Nevertheless, OMB continues to count it in the budget totals, thereby using Social Security surpluses to hide other Federal spending.

Current Federal accounting practices also provide incentives to cut programs financed through trust funds, even though these programs are now generating more revenue than they pay out in benefits. Because trust fund programs are included in budget totals, cuts in these programs appear to reduce the overall deficit. And because cuts in trust fund programs also increase the reserves in these programs, they provide the Government with a captive source of funds to borrow to cover general fund deficits, since trust fund reserves can only be invested in Government securities.

In addition, the interest the Government pays to trust funds on the money it has borrowed does not show up in the bottom line of the Federal budget. The interest paid to the trust funds is subtracted from total interest payments in arriving at the Federal budget totals, making it appear that the Government owes significantly less interest than is actually the case. This accounting procedure hides the role the trust funds play in financing the deficit. Furthermore, it makes the Federal Government's liability to pay interest on the Nation's debt appear significantly smaller.

The Truth in Budgeting Act will make three accounting changes to more accurately portray revenue and spending from Social Security and other mandatory trust funds. Essentially, my budgeting proposal will offset the mandatory trust fund outlays by including the payroll tax receipts, interest the trust funds receive, and contributions from the Government as employer. The Truth in Budgeting Act is intended to end the practice of using the Social Security surpluses to mask deficit.

It is time to end the gimmickry and provide clarity in budgeting. The Truth in Budgeting Act is a step in that direction. I plan to introduce the Truth in Budgeting Act in the next 2 weeks. I would also like to acknowledge the contributions of the National Committee to Preserve Social Security and Medicare in assisting me develop the Truth in Budgeting Act. I hope that my colleagues will join me in cosponsoring this important bill, and 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. 2208

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DECLARATION OF PURPOSES.

The Congress declares that—

(1) the unified Federal budget currently fails to recognize the independent and self-

sustaining status of Federal trust funds that provide basic benefits such as retirement, disability, health, and unemployment insurance to American workers;

(2) these trust funds are in the nature of insurance, financed by taxes levied on workers, employers, or both;

(3) the tax revenues dedicated to these trust funds serve to back a Federal commitment to the American workforce and are not available to cover the cost of other programs;

(4) interest paid on trust fund balances is dedicated to financing future benefits from such funds and, like dedicated taxes, cannot be used for other government expenditures; and

(5) Federal government agencies generally make payments to such trust funds on behalf of their employees in the same manner as private employers.

Therefore, the full amount of dedicated revenue, interest, and agency payments as employer which are credited to these trust funds should be included in the budget of the United States as an offset to the expenditures of the applicable fund.

SEC. 2. TRUTH IN BUDGETING.

The Congressional Budget and Impoundment Control Act of 1974 is amended by inserting at the end the following new title:

"TITLE XI—TRUTH IN BUDGETING

"SEC. 1101. SHORT TITLE.

"This title may be cited as the 'Truth in Budgeting Act of 1992'.

SEC. 1102. TREATMENT OF INTRAGOVERNMENTAL TRANSACTIONS INVOLVING CERTAIN TRUST FUNDS.

"Beginning with fiscal year 1994, the budget submitted by the President under section 1105(a) of title 31, United States Code, any revised budget submitted under section 1106 of title 31, United States Code, or any concurrent resolution on the budget each treat certain intragovernmental transactions involving any trust fund set forth in section 1103 as follows:

"(1) Revenues that are dedicated by law to a particular trust fund shall be offset against total budget authority and outlays of that trust fund.

"(2) Interest paid by the Government to a trust fund on its investments in Government securities or securities guaranteed by the Government shall be offset against the budget authority and outlays of the trust fund receiving the payment.

"(3) A Federal Government entity's payments as an employer into a trust fund shall be offset against the budget authority and outlays of the trust fund receiving the payment.

"SEC. 1103. APPLICABLE TRUST FUNDS.

"Section 1102 shall apply to the following trust funds:

"(1) Federal Old-Age and Survivors Insurance Trust Fund.

"(2) Federal Disability Insurance Trust Fund.

"(3) Federal Hospital Insurance Fund.

"(4) Federal Supplementary Medical Insurance Trust Fund.

"(5) Unemployment Trust Fund.

"(6) Railroad Retirement Account.

"(7) Railroad Retirement Supplemental Account.

"(8) Railroad Unemployment Insurance Account.

"(9) Social Security Equivalent Benefit Account.

"(10) Supplemental Annuity Pension Fund.

"(11) Dual Benefits Payments Account.

"(12) Civil Service Retirement and Disability Trust Fund.

"(13) Black Lung Disability Trust Fund.

"(14) Foreign Service Retirement and Disability Trust Fund.

"(15) Judicial Officer' Retirement Fund.

"(16) Judicial Survivors' Annuities Fund.

"(17) Claims Court Judges Retirement Fund.

"(18) Tax Court Judges Survivors Annuity Fund.

"(19) Military Retirement Fund.

"(20) Commissioned Corps Retirement Fund of the Public Health Service.

"(21) Central Intelligence Agency Retirement and Disability Fund.".

SEC. 3. CONFORMING AMENDMENT.

Section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting at the end the following:

"TITLE XI—TRUTH IN BUDGETING

"Sec. 1101. Short title.

"Sec. 1102. Treatment of intragovernmental transactions involving certain trust funds.

"Sec. 1103. Applicable trust funds.".•

By Mr. BREAUX (for himself, Mr. BOREN, and Mr. NICKLES):

S. 2209. A bill to amend the Internal Revenue Code of 1986 to modify the application of the alternative minimum tax to oil and gas drilling investments, and for other purposes; to the Committee on Finance.

TAX TREATMENT OF OIL AND GAS DRILLING INVESTMENTS

• Mr. BREAUX. Mr. President, I rise with my colleague, the distinguished senior Senator from Oklahoma, Senator BOREN, to introduce the Domestic Energy Security Tax Act of 1992. I want to recognize Senator BOREN'S leadership and the extraordinary amount of work that he has done to move this issue forward. I am pleased to join with him to introduce this bill today, which is almost identical to one of the provisions contained in legislation he has already introduced, S. 2159. The bill is intended to promote long-term economic growth through energy security and to keep jobs in America by providing urgently needed alternative minimum tax relief to independent oil and gas producers.

When I travel back to the State of Louisiana, the issue at the forefront of my constituents' minds is jobs. I know that many of my colleagues are hearing the same message. We need an economic policy that creates jobs, we need an economic policy that results in long-term economic growth. We need to turn away from the short-term economic fix to thinking about long-term economic growth.

A key component of economic growth is one that is often overlooked—access to affordable energy. The more our manufacturers have to spend on energy, the less there is to spend on critical research and development or other productivity measures. For consumers, the result is increased prices for goods and services. A private study shows that the U.S. trade deficit for crude oil will almost triple to $139 billion in only 8 years by 2000. Extrapolating current trends further to year 2020, we would be importing 17.8 million barrels per day which would cost an estimated $926 billion and require 36 supertankers sailing into, America's ports each day. If this happens, gasoline could cost the American consumer over $8 per gallon.

We have spent a great deal of time on the Senate floor debating energy policy. However, with the removal of the Arctic National Wildlife Refuge provisions of the bill, there are no provisions for oil and gas production in the national energy strategy legislation. We need to be concerned about the lack of policy focus on oil and gas production. I am supportive of the national energy strategy, but we cannot simply rule out oil and gas as an important energy resource.

If oil and gas weren't important in 1990 we would not have spent $65 billion on oil imports—roughly 64 percent of our total trade deficit. If oil and gas weren't important, we would not have risked the lives of 500,000 of our young Americans to fight and die in the desert sands of the Middle East.

Yet, despite the importance of oil and gas as an energy resources, we continue to allow our domestic industry to decline. The oil and gas rig count, the industry's measure of drilling activity, has hit a historical low of 653. This is compared to a record high in 1981 of 4,530. When the rig count is down, jobs throughout the country are lost. The number of active oil and gas producers has dropped by nearly 60 percent in the last 10 years. The capacity of the oil field service and supply industry has declined markedly. Well-servicing activity is down 20 percent from its most recent peak in December 1990, and continues to decline. An even more shocking fact is that since 1986, domestic crude oil production has declined by more than 1.7 million barrels per day; we've lost more oil at home than we sent our Americans to fight and die for during desert storm.

Why is this industry going down the tubes? We let OPEC dictate our energy policy. Each time OPEC sets cheap oil prices, our domestic oil and gas industry goes into further decline. Capital has dried up for the domestic oil and gas industry, with both U.S. major oil companies and independent producers going overseas where other governments welcome Americans and their superior technology.

The oil and gas industry needs access to capital for continued development, the country needs to keep this industry in the United States. The country cannot afford to let another industry go overseas, especially an industry so vital to our economic security. We don't rely on foreign countries for our food supply, so why do we keep policies that put our economic fate in OPEC's hands? Why do we keep policies that send jobs overseas?

The bill that Senator BOREN and I are introducing today would provide desperately needed capital to the domestic oil and gas industry. The provision is targeted not to the major oil companies but to the independent producers, who have historically drilled more than 85 percent of the exploratory wells in the country.

The bill provides important alternative minimum tax relief to independent oil and gas producers in the country. Currently, the law allows independent producers to deduct their intangible drilling costs [IDC] when figuring their regular tax liability. IDC's can be as much as 80 percent of the costs of drilling an exploratory well. Examples of IDC's are survey and seismic costs to locate the well, costs of drilling, costs of transporting and setting up the rig, costs of cementing the casing in place, and costs of cleaning up the drill site.

Current law also allows a deduction for percentage depletion for purposes of figuring regular tax liability. The deduction is equal to 15 percent of oil and gas revenue subject to several limitations. The deduction is not available for integrated oil and gas producers and is only available on the first 1,000 barrels a day of production. In addition, the percentage depletion deduction with regard to a particular property cannot exceed 100 percent of the net income from that property, and the overall deduction cannot exceed 65 percent of taxable income for the year.

These are important and longstanding provisions of the Tax Code. The difficulty arises when these deductions are subject to alternative minimum tax [AMT] treatment. In general, a taxpayer must pay the greater of his regular tax liability or his AMT liability. The taxpayer must make two calculations, his regular tax calculation that includes all credits and deductions and his alternative minimum tax calculation which requires adding back in preference items. Both IDC's and percentage depletion are preferences for purposes of calculating the AMT. Low profit, capital intensive industries, such as the independent oil and gas industry, often find themselves in the alternative minimum tax which means they actually lose the benefit of the deductions allowed in the Tax Code. An independent producer subject to the AMT can often have his tax liability tripled. This takes away valuable capital that can be reinvested to create jobs.

This bill simply says that IDC's and percentage depletion shall not be preferences for purposes of the AMT and can be deducted when calculating AMT. This is fair tax policy and puts oil and gas on a level playing field with other taxpayers. IDC's and depletion are analogous to the fully deductible ordinary and necessary business deductions in any other industry. However, no other corporation must add back in its standard business deductions for purposes of calculating its AMT.

The purpose of the AMT is to ensure that all taxpayers pay their fair share of tax liability. Some of my colleagues have expressed concern about the possibility that this bill could result in a taxpayer zeroing out his tax liability. To address their concerns, this bill contains a provision that in no cash can a taxpayer offset more than 90 percent of AMT liability through claiming these deductions.

As Congress continues to debate national energy policy and economic growth, I urge my colleagues to think long and hard about the need to ensure a viable domestic energy industry. This is not simply an oil and gas producing State issue. It is an issue of importance to all of us as we think about long-term economic growth. If Congress fails to enact a responsible energy strategy that includes oil and gas production measures, future historians may look upon this failure as one of the most irresponsible and far-reaching failures of our Government.•

• Mr. BOREN. Mr. President, I am pleased today to join with my colleague from Louisiana, Mr. BREAUX, in introducing this legislation to afford independent oil and gas producers relief from onerous provisions of the alternative minimum tax system. This legislation, which is similar to a provision in a comprehensive bill that I introduced in January, the Tax Fairness and Competitiveness Act of 1992, is targeted to revitalize an industry essential to this country's economic well-being.

We are all aware that independent producers drill 85 percent of the wells in this country and that they are responsible for 60 percent of the natural gas and 40 percent of the crude oil produced in the United States. These figures are particularly impressive when one considers that most independent producers operate small businesses—most have 10 employees or less.

Since 1986, however, domestic oil production has decreased more than 1.7 million barrels per day, and the number of domestic independent producers has dropped by more than one-third. The industry has lost 317,000 jobs in the last decade. Many experts point to the alternative minimum tax as a primary cause of this decline because it treats unfavorably one of the principal business expenditures of the industry—intangible drilling costs [IDC's]—and because it penalizes the capital recovery system unique to the minerals extraction industry—percentage depletion.

Because these phrases are terms of art, we can lose sight of the fact that these expenses are ordinary and necessary business expenses that are instrumental to the development of oil and gas resources. From an economic standpoint, IDC's are most comparable to research and development costs. Like research and development expenses. IDC's are incurred before a capital asset is known to exist. These costs include survey costs, amounts paid to negotiate and finalize drilling contracts, costs to prepare the drill site, costs of transporting and setting up the rigs, and costs of cementing casing in place. These crucial and unavoidable costs—which may never be recovered—can amount to as much as 80 percent of the total costs incurred in developing a well.

Percentage depletion recognizes that oil and gas producers must discover their capital assets by investing funds that are totally at risk in the hope of finding an asset that may or may not exist. Percentage depletion recognizes that the economic profit from successful wells must compensate for economic losses from dry holes and marginal wells that do not recover their investment. It also acknowledges that oil and gas properties are wasting assets with no residual value; as oil or gas is produced, the value of the asset decreases with each passing day.

Thus, both types of expenses are legitimate and necessary, given the unique nature of the oil and gas industry. Moreover, they both correspond to ordinary business expenses that are deductible for every other business, whether it pays regular corporate tax or the AMT. Our proposal would completely eliminate IDC's and percentage depletion as tax preference items for independent producers paying the AMT.

Mr. President, we simply cannot fail to pass meaningful relief for the independent oil and gas industry. Their situation grows increasingly desperate. As recently as January, the rig count—the industry's measure of drilling activity—reached 653. This is the lowest level in recorded history. I urge all my colleagues to support this vital legislation.•

By Mr. BENTSEN (for himself, Mr. PRYOR, Mr. PACKWOOD, Mr. MOYNIHAN, Mr. ROTH, Mr. BOREN, Mr. DANFORTH, Mr. RIEGLE, Mr. DURENBERGER, Mr. ROCKEFELLER, Mr. GRASSLEY, Mr. BREAUX, Mr. CHAFEE, Mr. DASCHLE, Mr. HATCH, Mr. JOHNSTON, and Mr. HOLLINGS):

S. 2210. A bill to provide a 1-year delay in the implementation of the final regulations issued by the Internal Revenue Service under sections 401(a)(4), 410(b), 414(r), and 414(s) of the Internal Revenue Code of 1986; to the Committee on Finance.

DELAY IN IMPLEMENTATION OF CERTAIN PENSION REGULATIONS

• Mr. BENTSEN. Mr. President, I rise today with my colleague, Senator PRYOR of Arkansas, to introduce a bill that would delay for 1 year the effective date of complex new pension regu-

lations. This will give the Treasury Department time to correct the flaws in the regulations and give pension plans time to digest and comply with the regulations. Under the bill, during the period of the delay, qualified retirement plans must be operated in accordance with a reasonable, good faith interpretation of the relevant provisions of the Internal Revenue Code.

Let me review the history of these pension guidelines. In May 1990, the IRS issued a massive proposed regulation under Internal Revenue Code section 401(a)(4). That four-line Code section states that benefits under qualified pension plans may not be provided in a manner that discriminates in favor of highly compensated employees. In September and December of last year, the IRS finalized those regulations and other related regulations dealing with minimum required coverage (section 410(b), the definition of compensation (section 414(s)), and the application of the minimum coverage requirements based on separate lines of business—section 414(r). To make matters worse, the effective date of these more than 600 pages of new regulations was January 1, 1992. Let me emphasize this point. The regulations were not really finished until December, and yet they went into effect in January. That means that the IRS is requiring over 800,000 pension plans to learn these new rules and to make major changes affecting the retirement benefits of almost 100 million American workers all in the period of only a few months.

Let me also point out that major elements of the new regulations were never included in the proposed regulations and were not the subject of public comment. Over the last few months it has become clear that some of these new elements—along with some of the original proposals—appear to be seriously flawed. One example that has been brought to my attention is the so-called service crediting rules. These are the rules that specify the manner in which plans can credit employees with service for purposes of vesting, benefit accrual, and eligibility to participate. Very restrictive rules were set forth for the first time in the final regulations published in September of last year. Under these new rules if a plan provides benefit credit for extended maternity leave, the entire plan could be disqualified. That is true even if the extended maternity benefit is equally available to high-paid and low-paid employees. Similarly, under these newly proposed rules, when an employee transfers from one division of a company to another division or from one employer in a multiple employer plan to another employer in that plan, the rules effectively prohibit the transferred employee from receiving credit for service with his or her former division or employer. This is true even if the plan provisions on portability rules are the same for all transferring employees. I think these flaws need to be corrected before the regulations are finalized.

I do not introduce this legislation lightly. As a general rule, I believe it is important that the Congress allow the regulatory process to work properly. I also strongly believe that the goal of these rules is a very important one: Our laws should ensure that rank and file employees receive retirement benefits that are comparable to the benefits provided to higher-income employees. But the fact is that imposing rules that do not work does not further this important goal. And requiring that rules be implemented within an unreasonable timeframe does not further the goals that these rules were originally intended to promote.

I actually hope we won't have to pass this legislation. I hope that the IRS and the Treasury Department get the message and delay these regulations immediately and then begin the process of fixing them. In November, all 20 members of the Finance Committee wrote Treasury Secretary Brady a letter asking that these regulations be delayed. Every single member of the committee signed that letter—Republican and Democrat. We have yet to receive a response to that letter. I hope that this legislation will send a clear signal of the Treasury Department and the IRS that the Finance Committee believes that the retirement benefits of almost 100 million American workers are just too important to be restructured in a few weeks based on flawed regulations.

I ask unanimous consent that the text of bill be printed in the RECORD.

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

S. 2210

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. 1-YEAR DELAY IN IMPLEMENTATION OF QUALIFIED PLAN NONDISCRIMINATION REGULATIONS.

(a) 1-YEAR DELAY.—

(1) IN GENERAL.—The final Treasury regulations described in paragraph (2) shall not apply to plan years beginning before the later of—

(A) January 1, 1993, or

(B) the date provided in such regulations.

(2) APPLICABLE REGULATIONS.—The final Treasury regulations described in this paragraph are as follows:

(A) Sections 1.401(a)(4)–0 through 1.401(a)(4)–13.

(B) Sections 1.410(b)–0 through 1.410(b)–10.

(C) Sections 1.414(r)–0 through 1.414(r)–11.

(D) Section 1.414(s)–1.

(E) Any other regulation (or other provision) reaching the same or similar results as the provisions described in the preceding subparagraphs.

(b) REASONABLE GOOD FAITH EFFORTS.—During any period during which the implementation of any regulation is delayed by reason of subsection (a), a plan shall not be treated as meeting the requirement of any provision of the Internal Revenue Code of 1986 to which such regulation relates unless such plan is operated in accordance with a reasonable, good faith interpretation of such provision.

(c) PLANS MAINTAINED BY GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—In the case of—

(1) a governmental plan (as defined in section 414 of the Internal Revenue Code of 1986), or

(2) a plan maintained by any organization exempt from tax under subtitle A of such Code,

subsection (a)(1)(A) shall be applied by substituting "1994" for "1993".•

By Mr. NICKLES (for himself and Mr. BOREN):

S. 2211. A bill to amend the Internal Revenue Code of 1986 to eliminate tax penalties that apply to oil and gas drilling investments, and for other purposes; to the Committee on Finance.

TAX TREATMENT OF OIL AND GAS DRILLING INVESTMENTS

Mr. NICKLES. Mr. President, today I am introducing a bill to eliminate provisions in the Tax Code that treat intangible drilling costs and percentage depletion as preference items for purposes of calculating a taxpayer's alternative minimum tax obligation.

Including intangible drilling costs and percentage depletion as preference items in 1986 was a mistake. It has been referred to by some Americans trying to increase oil production here in the United States as a drilling penalty tax for independents. In the fall of 1990, Congress made a change to these provisions by reducing the amount of intangible drilling costs that independents must include in the alternative minimum tax by 75 percent for exploratory wells and 15 percent for nonexploratory wells. But the penalty is still 25 percent for exploratory wells, including all developmental wells. We should have eliminated IDC's entirely from the alternative minimum tax, and that is what the bill I am introducing today will do.

IDC's are the only out-of-pocket business expense in any industry or profession that are treated as a preference item in the alternative minimum tax. Inclusion of IDC's was unfair, and another example of treating the domestic industry as a cash cow to be milked every time revenue is needed.

Taking IDC's and percentage depletion out of the alternative minimum tax is appropriate not simply because they are a unique penalty on oil and gas producers, but because in practice these provisions have been both anticompetitive and regressive, and have had the effect of significantly reducing drilling activity in the United States. For example, the active rig count stands at 653 for the week ending January 31. This is the lowest level of drilling activity since records were begun in the 1940's.

A rig count of 653 indicates that the industry has entered a period of accel-

erated decline. The Nation's domestic oil production is falling at an annual rate of 300,000 barrels a day, and foreign imports are rapidly approaching 50 percent of our domestic needs. We have lost 326,000 jobs, almost half of the oil field worker jobs since the peak in 1982 when the rig count was 3,105.

Independent producers have been devastated by a combination of low oil and gas prices and high taxes. Every rig that shuts down means jobs that are lost and increased dependency upon foreign oil for our energy needs. I strongly believe that tax relief is needed to save the domestic industry from collapse.

The time to act is now. The independent producers say that unless tax relief is provided, the industry will collapse. With the energy bill on the floor of the Senate and the President's budget before Congress, it is time to act and act decisively.

I am convinced that the alternative minimum tax relief is the single most important agenda item for the oil and gas industry. It does little good to talk about extending incentives unless we remove alternative minimum tax impediments.

When a recession coincides with sustained low oil and gas prices, the alternative minimum tax works like a severe penalty that gets progressively worse the longer the taxpayer falls under it. The longer prices are low and profits thin, the harsher is the alternative minimum tax's impact.

Under current law, when percentage depletion and intangible drilling costs are added back to income in calculating alternative minimum tax, tax liability, it can result in a 70 to 80 percent effective tax rate for some producers. The result is indisputedly punitive, if not confiscatory. It is for these reasons that I am calling today for the removal of intangible drilling costs and percentage depletion as preference items under the alternative minimum tax.

Mr. BOREN. Mr. President, I am pleased today to join with my colleague from Oklahoma, Mr. NICKLES, in introducing this legislation to afford independent oil and gas producers relief from onerous provisions of the alternative minimum tax system. This legislation, which is similar to a provision in a comprehensive bill that I introduced in January, the Tax Fairness and Competitiveness Act of 1992, is targeted to revitalize an industry essential to this country's economic well-being.

We are all aware that independent producers drill 85 percent of the wells in this country and that they are responsible for 60 percent of the natural gas and 40 percent of the crude oil produced in the United States. Since 1986, however, domestic oil production has decreased more than 1.7 million barrels per day. This lost production equates to a measurable loss in wealth to the U.S. society, before any multiplier effects, of $160 billion to $250 billion, and a loss in Federal and State revenues of more than $50 billion. The number of domestic independent producers has dropped by more than one-third, and the industry has lost 317,000 jobs in the last decade.

Many experts point to the alternative minimum tax as a primary cause of this decline because it treats unfavorably one of the principal business expenditures of the industry—intangible drilling costs [IDC's]—and because it penalizes the capital recovery system unique to the minerals extraction industry—percentage depletion.

To understand why the AMT treatment of IDC's and percentage depletion is unfair, we need to understand what these expenses represent for the oil and gas industry. Simply put, they are ordinary and necessary business expenses. From an economic standpoint, IDC's are most comparable to research and development costs. Like research and development expenses, IDC's are incurred before a capital asset is known to exist. These costs include survey costs, amounts paid to negotiate and finalize drilling contracts, costs to prepare the drill site, costs of transporting and setting up the rigs, and costs of cementing casing in place. These crucial and unavoidable costs—which may never be recovered—can amount to as much as 80 percent of the total costs incurred in developing a well.

Percentage depletion recognizes that oil and gas producers must discover their capital assets by investing funds that are totally at risk in the hope of finding an asset that may or may not exist. Percentage depletion recognizes that the economic profit from successful wells must compensate for economic losses from dry holes and marginal wells that do not recover their investment. It also acknowledges that oil and gas properties are wasting assets with no residual value; as oil or gas is produced, the value of the asset decreases with each passing day.

Thus, both types of expenses are legitimate and necessary, given the unique nature of the oil and gas industry. Moreover, they both correspond to ordinary business expenses that are deductible for every other business, whether it pays regular corporate tax or the AMT. Our proposal would completely eliminate IDC's and percentage depletion as tax preference items for independent producers paying the AMT.

Mr. President, we simply cannot fail to pass meaningful relief for the independent oil and gas industry. As I have noted before, their situation grows increasingly desperate. As recently as January, the rig count—the industry's measure of drilling activity—reached 653. This is the lowest level in recorded history. I urge all my colleagues to support this vital legislation.

By Mr. RIEGLE (by request):

S. 2212. A bill to provide funding for the Resolution Trust Corporation, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

RESOLUTION TRUST CORPORATION FUNDING ACT

• Mr. RIEGLE. Mr. President, at the request of the administration, I am introducing together with Senator GARN, their legislative proposal for additional loss funding for the Resolution Trust Corporation.

I regret that the RTC Thrift Depositor Oversight Board was unable to accept the Banking Committee's invitation to testify last month or earlier this week, but I look forward to their semi-annual appearance later this month and to working with the RTC Board and with Mr. Casey, the new RTC CEO, in developing legislation to provide them with the additional funds they need.

Mr. President, I ask unanimous consent that the text of the bill, along with a section-by-section analysis, together with a letter from Secretary Brady requesting action on this bill and a letter from Albert Casey also regarding this proposal be included in the RECORD.

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

S. 2212

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

SECTION 1. SHORT TITLE.

This Act may be cited as the "Resolution Trust Corporation Funding Act of 1992".

SEC. 2. FUNDING.

Section 21A(i) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(i)) is amended—

(1) in paragraph (3)—

(A) by inserting ", from monies not otherwise appropriated," after "Corporation"; and

(B) by striking "until April 1, 1992"; and

(2) by adding after paragraph (3) the following new paragraph:

"(4) Additional Funding.—In addition to amounts provided under paragraphs (2) and (3), the Secretary of the Treasury shall provide to the Corporation from monies not otherwise appropriated such sums as may be necessary to carry out the purposes of this section not to exceed $55 billion.".

RESOLUTION TRUST CORPORATION FUNDING ACT OF 1992

SECTION-BY-SECTION ANALYSIS

Section 1 would provide that this Act may be cited as the "Resolution Trust Corporation Funding Act of 1992."

Section 2(a) would make the $25 billion appropriation permanent by removing the April first cutoff date for the provision of funds. It would also correct a technical deficiency in the funding provision to specify the source of the appropriation.

Section 2(b) would provide an additional appropriation of $55 billion for the Resolution Trust Corporation to complete the resolutions of failed thrift institutions and to

protect their depositors. This sum would be in addition to the original funding of $50 billion, and in addition to the $30 billion and $25 billion appropriations provided in 1991.

THE SECRETARY OF THE TREASURY,
Washington, DC, January 22, 1992.

Hon. J. DANFORTH QUAYLE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed herewith is the Administration's legislative proposal to provide further funding to the Resolution Trust Corporation (RTC). Also enclosed is an analysis of the proposal.

The Administration strongly urges that its proposal be promptly enacted by the Congress.

In keeping with my testimony before the Senate and House Banking Committees in June and July of 1991, the Administration submitted on September 27, 1991, a legislative proposal to provide the RTC with additional funds sufficient to complete its task of resolving certain failed thrift institutions, an amount that the Administration estimated could reach $80 billion. In the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, passed by Congress on November 27, 1991, however, Congress provided only a portion ($25 billion) of the requested amount and did so in a manner that would make no funds available after April 1, 1992. The enclosed legislative proposal would provide the balance of the amount that may be needed to complete the RTC's mission of resolving failed thrift institutions and protecting their depositors.

An identical proposal has been transmitted to the Speaker of the House of Representatives.

Sincerely,

NICHOLAS F. BRADY.

RESOLUTION TRUST CORPORATION,
Washington, DC, February 5, 1992.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I would like to take this opportunity to extend to you, your colleagues, and your staff, my warmest thanks for the extremely expeditious manner in which you handled the matter of my nomination and confirmation as Chief Executive Officer of the Resolution Trust Corporation. I look forward to working closely with you to further our common objective of ensuring that the widespread insolvencies in the thrift industry are dealt with in a way that minimizes the overall cost to the taxpayer.

Let me also note that I appreciate the speed with which the Committee, in the context of scheduling the upcoming semiannual appearance of the Oversight Board, is moving to address the need of the RTC for additional funds to carry out its depositor protection responsibilities. In this connection, I wish to stress that we worked with the Administration to develop the proposed funding legislation that Secretary Brady recently transmitted to the Senate and are in full agreement with it.

Once again, my thanks.

Sincerely,

ALBERT V. CASEY
Chief Executive Officer.●

●Mr. GARN. Mr. President, today I join with the chairman of the Senate Banking Committee, Senator RIEGLE, in introducing, by request, the administration's bill to complete the funding initially requested last year for the Resolution Trust Corporation [RTC]. This new bill was sent to the Senate by the Secretary of the Treasury on January 22, 1992, and will provide the funding necessary to continue, and hopefully complete, the process of closing down failed savings and loans and keeping the funds of insured depositors safe and sound.

The administration's RTC funding request is twofold. First, it seeks to free-up the full $25 billion provided by Congress last November but subjected to an April 1, 1992, use or lose date. Second, it seeks to fund fully the RTC's future needs by appropriating an additional $55 billion, as requested by the Administration almost a year ago.

In his capacity as the new Chief Executive Officer of the RTC, Albert Casey appeared on January 22, 1992, before the Senate Banking Committee. He stated that, given the current projections, this funding request should be sufficient for the RTC to complete its work.

It is critical that Congress stop trickling funds into the RTC at minimum levels accompanied by arbitrary cut-off dates. Early last year the administration submitted its best estimate to Congress of the future funding needs of the RTC. Instead of providing the funds we all knew would be required, Congress chose to allocate a fraction of the monies, accompanied by a date seemingly chosen at random by which the funds must be spent or returned.

This policy of underfunding the RTC must end. It only adds to the ultimate cost of reclaiming the savings and loan industry honoring our commitment to the depositors of this country.

What the RTC needs is full access to those funds it requires to complete its job. By underfunding the RTC, we only increase the expense to the American taxpayers of honoring the deposit guarantee commitment. As Mr. Casey testified, Congress, by delaying the enactment of the RTC refunding bill last year, is responsible for increasing the overall cost to the American taxpayers by an additional $350 to $475 million.

Mr. President, there is some good news. By recent estimates, it looks as if we have turned the corner on the resolution of failed and failing savings and loans. The industry has returned to a position of positive net worth and should shortly again become profitable. Most importantly, we have met our commitment to the American public. All depositors, up to the $100,000 limit, have had their deposits honored in full.

We have come a long way; let us finish the job. By fully funding the RTC with the additional $55 billion required we will be able to conclude this sorry chapter in our political history. Delay is not free. To delay will only result in more costs as the RTC is forced, again, to suspend its operations until the inevitable refunding is authorized. Nobody denies that the RTC must be funded. It is our responsibility and duty.●

By Mrs. KASSEBAUM:

S.J. Res. 251. Joint resolution to designate the month of May 1992 as "National Huntington's Disease Awareness Month"; to the Committee on the Judiciary.

NATIONAL HUNTINGTON'S DISEASE AWARENESS MONTH

Mrs. KASSEBAUM. Mr. President, I rise today to introduce legislation that would designate May 1992 as "National Huntington's Disease Awareness Month." Congress has designated the 1990's as the "Decade of the Brain," and I believe now is the time to redouble efforts to combat brain disorders such as Huntington's disease.

Huntington's disease [HD], identified by Dr. George Huntington in 1872, is an inherited, progressively degenerative neurological disease caused by a dominant gene. This means that each child of an HD parent has a 50-50 chance of inheriting the disease. At present, there is no treatment and no cure.

Tragic as it is, there is tremendous hope. Federally funded National Institutes of Health research programs at HD Centers Without Walls developed a gene marker in 1983 and recent breakthroughs have HD scientists very close to identifying the elusive gene.

I believe that greater public awareness of this disease is necessary to strengthen private-sector support for research. In May, the Huntington's Disease Society of America plans a series of events to keep its support efforts in the public eye. I believe this joint resolution can contribute significantly to that effort, and I urge my colleagues to support it.

By Mr. DIXON:

S.J. Res. 252. Joint resolution designating the week of April 19-25, 1992 as "National Credit Education Week"; to the Committee on the Judiciary.

NATIONAL CREDIT EDUCATION WEEK

● Mr. DIXON. Mr. President, I rise to introduce a joint resolution designating the week of April 19-25, 1992, as "National Credit Education Week." I urge my colleagues to sponsor this timely resolution.

The United States is a nation addicted to credit, yet we as a people are poorly educated about the use and abuse of credit. We utilize credit to purchase cars, finance homes, pay for college tuition, and cover hospital and medical bills. It has become an integral part of our lives. Yet, tests administered to adults and high school seniors across the Nation show that United States consumers are poorly equipped to deal with the complex consumer credit choices which they confront in the marketplace today.

If anyone has any doubts about the need for increased education of consumers about credit choices and credit pitfalls, one need look no further than the list of personal bankruptcy filings in the United States.

Many factors are taken into account by an individual who declares personal bankruptcy. Some factors are beyond an individual's control, like catastrophic medical bills, or personal tragedies. However, all too often, a major contributing factor to a person's fall into personal bankruptcy is poor decisionmaking about the use of his or her line of credit.

Mr. President, the International Credit Association, Credit Professionals International, the National Foundation for Consumer Credit and other credit-related organizations have sponsored National Credit Education Week to better educate the public on the wise use of credit.

I encourage my colleagues to cosponsor this resolution. Increased education about the wise use of credit will help this Nation make good consumer decisions. We will be economically stronger because of it.●

By Mr. SEYMOUR:

S.J. Res. 253. Joint resolution to reduce Senate pay if the Senate fails to pass a bill or resolution no later than March 20, 1992, to stimulate national economic growth, and for other purposes; to the Committee on Rules and Administration.

REDUCTION OF SENATE PAY IN ABSENCE OF ECONOMIC GROWTH PLAN BY MARCH 20, 1992

Mr. SEYMOUR. Mr. President, I rise today for the purpose of introducing a Senate joint resolution. I believe that "resolution" is an appropriate word to describe what it is I am introducing today, because for some, at least for me, it represents a firmness of resolve. Sometime in the next 43 days, Mr. President, the Senate must live up to that definition of firmness of resolve in response to the economic ills and the great recession we currently face.

In short, what this resolution calls for is the U.S. Senate to pass an economic growth package by March 20 and for each day past March 20 that the Senate fails to pass an economic growth package 1 day's worth of our pay goes from our wallets to the unemployment trust fund. In other words, Mr. President, either we produce or we do not get paid. No package, no pay. That is the challenge.

We have had opportunities, Mr. President, to pass an economic growth package as long as I have been privileged to serve here, well over a year. Those who argued that the end of this recession was just around the corner, myself and others in this Chamber argued it was not going to happen, it was not going to turn around all by itself. To those who argued all last year that all we needed to do was push on Alan Greenspan to get lower interest rates and that will turn this recession around—I answer by saying that if interest rates were zero and you cannot get a loan, it does not make one whit of difference.

So we went on through the summer and on through the fall, and I as well as others argued late in the fall, before we went into the December recess, that we ought not have a recess, that we should have stayed through Thanksgiving, through Christmas, through New Years and hammered out a bipartisan economic growth package. But that did not happen either, Mr. President.

I commend both the majority leader and the Republican leader for agreeing to cancel the March recess. That shows that the Senate is going to be serious in its attention to this economic growth package. I, for one, would have been willing to remain here next week during the recess that the Senate will be on, but nevertheless, enough of that. To dwell on lost time is time also lost.

Now is the time for action. We have many important legislative items on the agenda. The energy bill which we are currently debating is certainly one of them. But I do not know, and I defy anybody on the floor of the Senate to so identify, of a more important or a more pressing issue than putting Americans back to work.

The President believes that an economic package is our first priority, and he has drawn a line in the sand. That line is March 20 of this year. I think that happens to represent a fair challenge, and the only way to meet that challenge is to work together for a bipartisan package. I underscore "bipartisan." We do not owe it to the President to meet the March 20 deadline; we owe it to the American people. We owe it to them to get this economy moving and to get it moving now.

Mr. President, I was touched by a letter that I received from a very small business owner in California, Ms. Judy Baldwin, who owns Ricco's Pizza Parlor in Chico, CA, and she said it very eloquently. She represents a lot of small business people not just in California but around this country. She said:

> My husband and I own a successful Restaurant in Chico. We have watched our income dwindle to less than half. We have cut back all expenses, eliminated our manager position, scrutinized all direct overhead and increased our workday to 62 hours a week.

That is the good story. The bad story is those who cannot even hang on by their fingernails anymore, those who are unemployed. So I say it is time to act and act in a bipartisan fashion. I have my own economic growth plan, and I suppose there are 99 other Senators who have theirs. That is not what I am asking be passed here. I am asking very simply that we pass a package and we pass it by March 20. If we do not, then forfeit our pay. If we have to lock these doors of the Senate Chamber and keep us locked up here until Democrat and Republican alike lay down their partisan swords and reach a conclusion that is going to work for the American people, then so be it, lock the doors.

I guess I am feeling the same frustration, yes, even anger, that people in California and across this country are feeling for the lack of attention and all the finger pointing that has gone on while Rome continues to burn and people continue to stand in longer and longer lines of unemployment. It is time to get an economic plan in action. It is time to put America back to work. It is time that we in Congress get off our duffs and do the job we were sent here to do.

Mr. President, I am hopeful that in the next 43 days, in fact, this body does come together because this issue we have been already too slow to respond to, and it is a matter of the greatest urgency, greater than any other legislation this body will consider.

ADDITIONAL COSPONSORS

S. 81

At the request of Mr. KASTEN, his name was withdrawn as a cosponsor of S. 81, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 401

At the request of Mr. DOMENICI, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of S. 401, a bill to amend the Internal Revenue Code of 1986 to exempt from the luxury excise tax parts or accessories installed for the use of passenger vehicles by disabled individuals.

S. 492

At the request of Mr. SIMON, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 492, a bill to amend the National Labor Relations Act to give employers and performers in the live performing arts rights given by section 8(e) of such act to employers and employees in similarly situated industries, to give to such employers and performers the same rights given by section 8(f) of such act to employers and employees in the construction industry, and for other purposes.

S. 664

At the request of Mr. THURMOND, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 664, a bill to require that health warnings be included in alcoholic beverage advertisements, and for other purposes.

S. 815

At the request of Mr. BROWN, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 815, a bill to amend the

Public Health Service Act to provide for the establishment of an Office of Medical Insurance and to establish a self insurance fund to provide coverage for successful malpractice claims filed against health service providers utilized by community and migrant health centers and for other purposes.

S. 873

At the request of Mr. BOREN, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 873, a bill to amend the Internal Revenue Code of 1986 to clarify the treatment of interest income and rental expense in connection with safe harbor leases involving rural electric cooperatives.

S. 911

At the request of Mr. KENNEDY, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 911, a bill to amend the Public Health Service Act to expand the availability of comprehensive primary and preventative care for pregnant women, infants, and children and to provide grants for home visiting services for at risk families, to amend the Head Start Act to provide Head Start services to all eligible children by the year 1994, and for other purposes.

S. 1175

At the request of Mr. KERRY, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 1175, a bill to make eligibility standards for the award of the Purple Heart currently in effect applicable to members of the Armed Forces of the United States who were taken prisoners or taken captive by a hostile foreign government or its agents or a hostile force before April 25, 1962, and for other purposes.

S. 1178

At the request of Mr. ROCKEFELLER, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 1178, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for expenditures for vehicles which may be fueled by clean burning fuels, for converting vehicles so that such vehicles may be so fueled, or for facilities for the delivery of such fuels, and for other purposes.

S. 1423

At the request of Mr. DODD, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 1423, a bill to amend the Securities Exchange Act of 1934 with respect to limited partnership rollups.

S. 1521

At the request of Mr. MCCONNELL, the name of the Senator from Alabama [Mr. HEFLIN] 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. 1578

At the request of Mr. THURMOND, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 1578, a bill to recognize and grant a Federal charter to the Military Order of World Wars.

S. 1851

At the request of Mr. ROCKEFELLER, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 1851, a bill to provide for a Management Corps that would provide the expertise of United States businesses to the Republics of the Soviet Union and the Baltic States.

S. 1921

At the request of Mr. BENTSEN, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 1921, a bill to amend the Internal Revenue Code of 1986 to allow a $300 tax credit for children to expand the use of individual retirement accounts, and for other purposes.

S. 1932

At the request of Mr. BUMPERS, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 1932, a bill to amend the Internal Revenue Code of 1986 to provide a capital gains tax differential for individual and corporate taxpayers who make high risk, long term growth oriented venture and seed capital investments in startup and other small enterprises.

S. 1966

At the request of Mr. BIDEN, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 1966, a bill to establish a national background check procedure to ensure that persons working as child care providers do not have a criminal history of child abuse, to initiate the reporting of all State and Federal child abuse crimes, to establish minimum guidelines for States to follow in conducting background checks and provide protection from inaccurate information for persons subjected to background checks and for other purposes.

S. 1984

At the request of Mr. SPECTER, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 1984, a bill to provide an incentive for increased consumer spending and to provide a short term economic stimulus by waiving the penalty under the Internal Revenue Code of 1986 on certain withdrawals from pension plans which are used to purchase consumer goods and other items and by extending for 1 year the research and experimentation tax credit, the low-income housing tax credit, the mortgage revenue bond tax provisions, and the targeted jobs tax credit.

S. 2064

At the request of Mr. HATFIELD, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 2064, a bill to impose a 1 year moratorium on the performance of nuclear weapons tests by the United States unless the Soviet Union conducts a nuclear weapons test during that period.

S. 2065

At the request of Mr. DIXON, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 2065, a bill to federalize the crime of child molestation for repeat offenders.

S. 2106

At the request of Mr. CRANSTON, the name of the Senator from Idaho [Mr. SYMMS] was added as a cosponsor of S. 2106, a bill to grant a Federal charter to the Fleet Reserve Association.

S. 2167

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 2167, a bill to restrict trade and other relations with the Republic of Azerbaijan.

S. 2183

At the request of Mr. SHELBY, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 2183, a bill to prohibit the Secretary of Veterans Affairs from carrying out the rural health care initiative.

S. 2185

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 2185, a bill to suspend the forcible repatriation of Haitian nationals fleeing after the coup d'etat in Haiti until certain conditions are met.

At the request of Mr. KENNEDY, the names of the Senator from Minnesota [Mr. DURENBERGER], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Washington [Mr. ADAMS], the Senator from Michigan [Mr. REIGLE], and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of S. 2185, supra.

SENATE JOINT RESOLUTION 218

At the request of Mr. MITCHELL, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Oregon [Mr. HATFIELD], the Senator from Kentucky [Mr. FORD], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Alabama [Mr. SHELBY], the Senator from Mississippi [Mr. COCHRAN], the Senator from North Dakota [Mr. CONRAD], the Senator from California [Mr. CRANSTON], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Missouri [Mr. BOND], the Senator from West Virginia [Mr. BYRD], the Senator from Mississippi [Mr. LOTT], the Senator from Illinois [Mr. SIMON], the Senator from Arizona [Mr. DECONCINI], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Wyoming [Mr. WALLOP], the Senator from Indiana [Mr. COATS], the Senator from Nebraska [Mr. EXON], the Senator from Idaho [Mr. SYMMS], and the Senator from Massachusetts [Mr. KENNEDY] were added as cosponsors of Senate Joint

Resolution 218, a joint resolution designating the calendar year 1993 as the "Year of American Craft: A Celebration of the Creative work of the Hand."

SENATE JOINT RESOLUTION 224

At the request of Mr. SIMON, the names of the Senator from South Carolina [Mr. THURMOND], the Senator from Arkansas [Mr. PRYOR], the Senator from Georgia [Mr. NUNN], the Senator from Virginia [Mr. WARNER], the Senator from Delaware [Mr. ROTH], the Senator from Vermont [Mr. JEFFORDS], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Kansas [Mr. DOLE], the Senator from Montana [Mr. BURNS], the Senator from Rhode Island [Mr. PELL], and the Senator from Georgia [Mr. FOWLER] were added as cosponsors of Senate Joint Resolution 224, a joint resolution designating March 1992 as "Irish-American Heritage Month."

SENATE JOINT RESOLUTION 231

At the request of Mr. THURMOND, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of Senate Joint Resolution 231, a joint resolution to designate the month of May 1992, as "National Foster Care Month."

SENATE JOINT RESOLUTION 233

At the request of Mr. BIDEN, the names of the Senator from Arizona [Mr. MCCAIN], the Senator from North Dakota [Mr. CONRAD], the Senator from Maryland [Ms. MIKULSKI], the Senator from California [Mr. SEYMOUR], the Senator from Delaware [Mr. ROTH], the Senator from Georgia [Mr. NUNN], and the Senator from Arkansas [Mr. PRYOR] were added as cosponsors of Senate Joint Resolution 233, a joint resolution to designate the week beginning April 12, 1992, as "National Public Safety Telecommunicators Week."

SENATE JOINT RESOLUTION 240

At the request of Mr. SPECTER, the names of the Senator from Arkansas [Mr. BUMPERS] and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of Senate Joint Resolution 240, a joint resolution designating March 25, 1992, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy."

SENATE JOINT RESOLUTION 244

At the request of Mr. SIMPSON, the names of the Senator from Georgia [Mr. NUNN] and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of Senate Joint Resolution 244, a joint resolution to recognize and honor the National Conference of Commissioners on Uniform State Laws on its centennial for its contribution to a strong Federal system of government.

SENATE CONCURRENT RESOLUTION 70

At the request of Mr. SANFORD, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of Senate Concurrent Resolution 70, a concurrent resolution to express the sense of the Congress with respect to the support of the United States for the protection of the African elephant.

SENATE RESOLUTION 249

At the request of Mr. D'AMATO, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of Senate Resolution 249, a resolution expressing the sense of the Senate that the United States should seek a final and conclusive account of the whereabouts and definitive fate of Raoul Wallenberg.

AMENDMENT NO. 1570

At the request of Mr. KENNEDY, his name was added as a cosponsor of amendment No. 1570 proposed to S. 2166, a bill to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation, and for other purposes.

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of amendment No. 1570 proposed to S. 2166, supra.

At the request of Mr. GORE, the names of the Senator from Indiana [Mr. LUGAR], the Senator from Rhode Island [Mr. PELL], the Senator from Maryland [Ms. MIKULSKI], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Connecticut [Mr. DODD], the Senator from California [Mr. CRANSTON], the Senator from North Dakota [Mr. CONRAD], the Senator from New York [Mr. MOYNIHAN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Ohio [Mr. METZENBAUM], and the Senator from Louisiana [Mr. JOHNSTON] were added as cosponsors of amendment No. 1570 proposed to S. 2166, supra.

SENATE RESOLUTION 255—RELATIVE TO BREAST CANCER

Mr. LEAHY (for himself and Mr. ADAMS) submitted the following resolution; which was referred to the Committee on Labor and Human Resources:

S. RES. 255

Whereas in 1966, one in 14 women in the United States was expected to develop breast cancer in her lifetime, and in 1991 one in 9 women in the United States could expect to develop the disease;

Whereas it is estimated that 45,000 deaths in the United States in 1991 were attributed to breast cancer;

Whereas in 1991, 175,000 women in the United States were diagnosed with breast cancer;

Whereas breast cancer incidence rates in the United States have increased more than 2 percent a year since 1973;

Whereas in 1990, the Federal Government spent $1,700,000,000 on all cancer research, but targeted only $81,000,000 toward breast cancer;

Whereas after decades of research and experimentation, there is still no certain cure for, or known cause of, breast cancer;

Whereas the Public Health Service reaffirms women's health as a national public health priority; and

Whereas Federal monies are urgently needed to eliminate the epidemic of breast cancer: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Secretary of Health and Human Services should declare breast cancer a public health emergency pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) for the purpose of accelerating investigation into the cause, treatment, and prevention of the cause, of the emergency; and

(2) activities initiated under the breast cancer public health emergency should not supplant the planning, review, and budgeting of multiyear major research projects into the cause, treatment, and prevention of breast cancer.

AMENDMENTS SUBMITTED

NATIONAL ENERGY SECURITY ACT

SPECTER AMENDMENTS NOS. 1572 AND 1573

(Ordered to lie on the table.)

Mr. SPECTER submitted two amendments intended to be proposed by him to the bill (S. 2166) to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation, and for other purposes, as follows:

AMENDMENT NO. 1572

(a) It is the sense of the Senate that Section 162 of the Internal Revenue Code of 1986 (relating to trade or business expenses) should be amended—

(1) by redesignating subsection (m) as subsection (n); and

(2) by inserting after subsection (1) the following new subsection:

"(m) NO DEDUCTION FOR PARKING EXPENSES UNLESS EMPLOYER PROVIDES CASH ALTERNATIVE.—

"(1) IN GENERAL.—No deduction shall be allowed under this chapter for any amount paid or incurred by an employer in connection with the providing of a parking subsidy to any employee unless the employer provides the parking subsidy pursuant to an arrangement under which the employee may elect, in lieu of a parking subsidy, to receive cash or a mass transit, car pool, or van pool subsidy in an amount equal to the fair market value of such parking subsidy.

"(2) DEFINITION.—For purposes of this subsection, the term 'parking subsidy' includes the direct and indirect cost to an employer of providing a parking space to an employee, not including any amount paid by the employee."

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning with the third taxable year beginning after the date of enactment of this Act.

AMENDMENT NO. 1573

At the appropriate place in the bill, insert the following:

SEC. . REMOVAL OF CERTAIN MODEL YEAR VEHICLES FROM USE.

Title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001 et seq.) is amended by adding at the end the following new section;

"REMOVAL FROM SERVICE OF CERTAIN MOTOR VEHICLES

"SEC. . (a) Prior to the expiration of the 90-day period following the date of the enact-

ment of this section, the Secretary shall issue such regulations as may be necessary to establish and implement a program encouraging the removal from use and the marketplace of motor vehicles manufactured prior to model year 1980.

"(b) Such program shall provide that any motor vehicle dealer who receives, as a trade-in on the sale by such dealer of a new motor vehicle, a motor vehicle of a model year prior to model year 1980, may remove such motor vehicle from use and the marketplace.

"(c) Such regulations shall further provide that upon certification by the motor vehicle dealer to the Secretary that the engine block and the chassis of the motor vehicle have been removed from use and the marketplace and destroyed in accordance with such program, the manufacturer of the new motor vehicle shall receive a credit to its corporate average fuel economy. Such credit shall equal the difference between the fuel economy of the new motor vehicle, and the motor vehicle removed from use and the marketplace.

"(d) Regulations under this section shall require proof from the motor vehicle dealer that the motor vehicle was destroyed in accordance with the regulation, and that the vehicle's identification number was removed from the registration list of the appropriate State or States.

"(e)(1) Such regulations under this section shall require the motor vehicle manufacturer to calculate and transmit to the Secretary the financial value per gallon credit.

"(2) No later than 30 days after receipt of the calculations under paragraph (1), the Secretary shall—

"(A) review and approve such calculations to determine if they are in accordance with regulations; and

"(B) if approved under subparagraph (A), publish such calculations in the Federal Register.

"(f) Such regulations shall require—

"(1) the motor vehicle manufacturer to rebate the financial value to an individual who traded in a motor vehicle of a model year prior to 1980 described under subsection (b);

"(2) that an individual trading in a motor vehicle shall have evidence that such vehicle has been registered and in use for 1 year prior to the date of trade-in; and

"(3) that an individual who purchases a new motor vehicle and certifies that the motor vehicle of a model year prior to 1980 was not traded in but was destroyed, shall receive such financial value.

"(g) Any person violating a regulation promulgated under this section shall be subject to a civil penalty assessed by the Secretary in an amount not to exceed $2,000.

"(h) No credits shall be given under this section on or after January 1, 1994."

WELLSTONE (AND GRAHAM) AMENDMENT NO. 1574

Mr. WELLSTONE (for himself and Mr. GRAHAM) proposed an amendment to the bill S. 2166, supra, as follows:

On page 303, strike line 15 and all that follows through line 21.

JOHNSTON (AND OTHERS) AMENDMENT NO. 1575

Mr. JOHNSTON (for himself, Mr. WALLOP, Mr. SIMPSON, Mr. BREAUX, Mr. FORD, Mr. WIRTH, Mr. HEFLIN, Mr. BUMPERS, Mr. PRYOR, Mr. SHELBY, Mr. BINGAMAN, Mr. SYMMS, and Mr. CONRAD) proposed an amendment to the bill S. 2166, supra, as follows:

On page 189, strike line 11 through page 193, line 6 and insert the following:

"TITLE IX—NUCLEAR REACTOR LICENSING

"SEC. 9101. SHORT TITLE.—This title may be cited as the "Nuclear Reactor Licensing Act of 1991.".

"SEC. 9102. COMBINED LICENSES.—Section 185 of the Atomic Energy Act of 1954 (42 U.S.C. 2235) is amended by—

(1) adding "and Operating Licenses" after "Permits" in the catchline;

(2) adding a subsection designator "(a)" before "All"; and,

(3) adding the following new subsection:

"(b) After holding a public hearing under section 189(a)(1)(A) of this Act, the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. Any finding made under this subsection shall not require a hearing except as provided in section 189a.(1)(B).

"SEC. 9103. POST-CONSTRUCTION HEARINGS ON COMBINED LICENSES.—Section 189a.(1) of the Atomic Energy Act is amended by:

(1) adding a subparagraph designator "(A)" before "In" and

(2) adding the following new subparagraph:

"(B)(i) Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 185b., the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

"(ii) A request for hearing under this subparagraph shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

"(iii) After receiving a request for a hearing under this subparagraph, the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

"(iv) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under this subparagraph, and shall state its reasons therefore.

"(v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within one hundred and eighty days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A).

"SEC. 9104. RULEMAKING.—The Nuclear Regulatory Commission shall propose regulations implementing this title within one year of the date of enactment of this Act.

SEC. 9105. AMENDMENT OF A COMBINED LICENSE PENDING A HEARING.—Section 189(a)(2) of the Atomic Energy Act of 1954 is amended by inserting "or any amendment to a combined construction and operating license" after "any amendment to an operating license" each time it occurs.

SEC. 9106. JUDICIAL REVIEW.—Section 189(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2239(b)) is amended by inserting "or any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license" before "shall be subject to judicial review".

"SEC. 9107. CONFORMING AMENDMENT.—The table of contents of the Atomic Energy Act of 1954 is amended by amending the item relating to section 185 to read as follows:

"SEC. 185. Construction Permits and Operating Licenses."

"SEC. 9108. EFFECT ON PENDING PROCEEDINGS.—The provisions of this title apply to all proceedings involving a combined license for which an application was filed after May 8, 1991."

AMENDMENT TO S. 2166, TITLE IX TECHNICAL AND CONFORMING AMENDMENT

On page 5, following the item in the table of contents relating to section 9105, insert the following and renumber subsequent sections accordingly:

"SEC. 9106. Judicial review."

GRAHAM (AND OTHERS) AMENDMENT NO. 1576

Mr. GRAHAM (for himself, Mr. FOWLER, Mr. KENNEDY, Mr. BRYAN, Mr. REID, Mr. HARKIN, Mr. WELLSTONE, Mr. JEFFORDS, and Mr. MITCHELL) proposed an amendment to amendment No. 1575 proposed by Mr. JOHNSTON (and others) to the bill S. 2166, supra, as follows:

On page 1 of the Johnston amendment strike from line 2 through the end on page 6 and insert in lieu thereof the following:

"SEC. 9000. SHORT TITLE.—This title may be cited as the "Civilian Nuclear Reactor Licensing Act of 1992."

SEC. 9101. CONSTRUCTION PERMITS AND OPERATING LICENSES.—Section 185 of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

SEC. 185. CONSTRUCTION PERMIT AND OPERATING LICENSES.

(a) All applicants for licenses to construct or modify production or utilization facilities

shall be initially granted a construction permit after the Commission has provided an opportunity for public hearing on the record pursuant to section 189 of this Act and if the application is otherwise acceptable to the Commission. Upon the completion of the construction or modification of the facility, upon the filing of any additional information needed to bring the original application up to date, after providing an opportunity for public hearing on the record pursuant to section 189 of this Act, and upon finding that the facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this Act and of the regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of an operating license would not be in accordance with the provisions of this Act, the Commission shall thereupon issue an operating license for the applicant. For all other purposes of this Act, a construction permit is a "license."

(b) Notwithstanding any other provision of this section, the Commission shall issue to the applicant a combined construction permit and operating license for a thermal neutron power generation facility after providing an opportunity for public hearing on the record pursuant to section 189 of this Act, if the application contains sufficient information to support the issuance of a combined construction permit and an operating license in accordance with the regulations of the Commission and the Commission determines that there is a reasonable assurance that the facility will be constructed and will operate in conformity with the application, the provisions of this Act, and the rules and regulations of the Commission. The Commission shall identify within such combined construction permit and operating license the inspections, tests, and analyses which shall be performed by the licensee and the acceptance criteria therefor which will provide reasonable assurance that the plant has been constructed and will operate in accordance with the license. After issuance of a combined construction permit and operating license for a thermal neutron power generation facility, the Commission shall assure through inspections, tests and analyses that construction is completed in conformity with the combined construction permit and operating license, consistent with the regulations of the Commission. Prior to the commencement of operation of any facility licensed under this subsection, the Commission shall publish in the Federal Register a notice of the intended operation of such facility, and shall provide a sixty-day period during which any person may file a written objection to the commencement of operation on the basis that the facility authorized has not been constructed or will not operate in conformity with the license. Such objection shall set forth in reasonable detail the facts and arguments upon which the objection is based, and may be accompanied by a request for a hearing on the record under section 189.

If a hearing is requested, the Commission shall determine whether good cause exists therefor and, if so, the issues to be heard and whether the hearing must precede commencement of operation of the facility in order to provide reasonable assurance of the protection of the public health and safety and common defense and security. The Commission shall designate an issue for a hearing if the issue consists of a substantial dispute of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except at a hearing and:

(i) the issue was not and could not have been raised and resolved in any proceeding for the issuance, modification or amendment of a license, permit, or approval for that facility, its site, or design; or

(ii) a showing has been made that (I) there has been nonconformance with the license; (II) such nonconformance has not been corrected; and (III) such nonconformance could materially and adversely affect the safe operation of the facility.

Following completion of any hearing held, the Commission shall decide whether the license to construct and operate should be modified. Prior to the commencement of operation, the Commission shall determine, based upon the requisite program of inspections, tests, and analyses, whether construction has been completed in conformance with the combined construction permit and operating license, and consistent with the regulations of the Commission.

TITLE II—MISCELLANEOUS PROVISIONS

DEFINITION

"SEC. 9201. Section 11 of the Atomic Energy Act of 1954, as amended, is amended by adding new subsection dd. as follows:

(dd) "Thermal neutron power generation facility" means a utilization facility which is designed to produce electrical energy and in which core power is designed to be produced predominantly by thermal neutron fission."

TITLE III—CONFORMING AMENDMENTS

ANTITRUST PROVISIONS

SEC. 9301. Subsection 105(c) of the Atomic Energy Act of 1954, as amended, is amended in the first sentence of paragraph (2) by inserting "and/" after the word "construct."

LICENSE APPLICATIONS

SEC. 9303. Subsection 182 b. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"(b) The Advisory Committee on Reactor Safeguards shall review each application under section 103 or section 104(b) for a construction permit and/or an operating license for a facility; any application under section 104(c) for a construction permit and/or operating license for a testing facility; any application under section 104(a) or (c) specifically referred to it by the Commission; any proposed authorization to commence operation under sec. 185 b.; and any application for an amendment to a construction permit or to an operating license under section 103 or 104 (a), (b), or (c) and shall submit a report thereon which shall be made a part of the record of the application and available to the public except to the extent that security classification prevents disclosure."

REVOCATION

SEC. 9304. Section 186 a. of the Atomic Energy Act of 1954, as amended, is amended by inserting the words "or section 185" after the words "section 182.".

TITLE IV—EFFECTIVE DATE

SEC. 9401. All sections of this Act shall take effect as of the date of enactment, and shall apply to all proceedings involving a combined license for which an application was filed after May 8, 1991.

SEC. 9402. The Nuclear Regulatory Commission shall propose regulations implementing this Act within one year of the date of enactment of this Act.

BRADLEY (AND OTHERS) AMENDMENT NO. 1577

Mr. WALLOP (for Mr. BRADLEY, for himself, Mr. DOMENICI, Mr. WIRTH, Mr. SEYMOUR, Mr. KENNEDY, Mr. GORTON, Mr. KERRY, Mr. COHEN, Mr. WELLSTONE, Mr. KOHL, Mr. LAUTENBERG, Mr. CRANSTON, Mr. DURENBERGER, Mr. LEAHY, Mr. LIEBERMAN, Mr. PELL, Mr. WALLOP, Mr. JOHNSTON, and Mr. ADAMS) proposed an amendment to the bill S. 2166, supra, as follows:

On page 288, strike lines 10 through 25 and, on page 289, lines 1 through 15, and redesignate succeeding subsections accordingly.

BENTSEN (AND OTHERS) AMENDMENT NO. 1578

Mr. JOHNSTON (for Mr. BENTSEN, for himself, Mr. SIMPSON, Mr. JOHNSTON, Mr. WALLOP, Mr. CRAIG, Mr. BOREN, and Mr. BREAUX) proposed an amendment to the bill S. 2166, supra, as follows:

At the appropriate place in the bill, add the following new sections:

SEC. . AMENDMENT TO TITLE 11 OF THE UNITED STATES CODE.

Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "or" at the end,

(2) in paragraph (2) by striking the period at the end and inserting "; or", and

(3) by adding at the end the following:

"(3) any interest of a debtor in or to liquid or gaseous hydrocarbons which the debtor has transferred or has agreed to transfer through or by a written farmout agreement, or any written agreement directly related thereto.

The trustees' rights, created in sections 365 and 544(a)(3), shall not operate to cancel or otherwise limit the effect of paragraph (3). For purposes of this subsection, the term 'farmout agreement' is a written agreement (A) in which the owner, of the rights to drill, produce or operate liquid or gaseous hydrocarbons on property agrees or is obligated to transfer or assign all or a portion of those rights to another party and (B) in which the other party, its agents or assignees, as consideration, agrees to perform drilling, reworking, recompleting, testing or other similar or related operations to develop or produce liquid or gaseous hydrocarbons on the property. In determining if a farmout agreement exists, the courts shall look to the custom and practices within the oil and gas industry for guidance. This subsection shall not operate to exclude from the debtor's estate the consideration which the debtor retains, receives, or will receive in exchange for transferring its interest in liquid or gaseous hydrocarbons.".

SEC. . EFFECTIVE DATE: APPLICATION OF AMENDMENT.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENT.—The amendment made by section 2 shall not apply with respect to any case commenced under title 11 of the United States Code before the date of the enactment of this Act.

INOUYE (AND OTHERS) AMENDMENT NO. 1579

Mr. JOHNSTON (for Mr. INOUYE, for himself, Mr. MCCAIN, Mr. DOMENICI, Mr. SIMON, and Mr. ADAMS) proposed an amendment to the bill S. 2166, supra, as follows:

On page 401, after line 4, insert the following new title:

TITLE XVII—INDIAN ENERGY RESOURCE DEVELOPMENT COMMISSION

SECTION 17101. SHORT TITLE.

This title may be cited as the "Indian Energy Resource Development Commission Act of 1992".

SEC. 17102. ESTABLISHMENT.

There is established the Indian Energy Resource Development Commission (hereafter in this title referred to as the "Commission").

SEC. 17103. MEMBERSHIP OF THE COMMISSION.

(a) MEMBERSHIP.—

COMPOSITION.—The Commission shall consist of—

(1) 6 members appointed by the Secretary of the Interior from recommendations submitted by Indian tribal governments;

(2) 3 members appointed by the Secretary of the Interior from recommendations submitted by the Governors of States which have Indian reservations with energy resources;

(3) 9 members appointed by the Secretary of the Interior from private sector individuals with expertise in energy development, taxation of energy resources, or oil and gas royalty management, administration, auditing and accounting;

(4) the Secretary of the Interior, or his designee; and

(5) the Secretary of Energy, or his designee.

(b) APPOINTMENTS.—Members of the Commission shall be appointed not later than 60 days following the date of enactment of this title.

(c) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment was made. A vacancy in the Commission shall not affect the powers of the Commission.

(d) CHAIRPERSON.—The members of the Commission shall elect a Chairperson from among the members of the Commission.

(e) QUORUM.—Eleven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(f) ORGANIZATIONAL MEETING.—The Commission shall hold an organizational meeting to establish the rules and procedures of the Commission not later than 30 days after all members are first appointed to the Commission.

(g) COMPENSATION.—Each member of the Commission who is not an officer or employee of the United States shall be compensated at a rate established by the Commission not to exceed the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the actual performance of duties as a member of the Commission. Each member of the Commission who is an officer or employee of the United States shall receive no additional compensation.

(h) TRAVEL.—While away from their homes or regular places of business in the performance of duties for the Commission, all members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at a rate established by the Commission not to exceed the rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

SEC. 17104. COMMISSION STAFF.

(a) EXECUTIVE DIRECTOR.—The Commission shall appoint an Executive Director who shall be compensated at a rate established by the Commission not to exceed the rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) ADDITIONAL PERSONNEL.—With the approval of the Commission, the Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission. Such appointments shall be made in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, but at rates not to exceed the rate prescribed for level GS-15 of the General Schedule under section 5108 of such title.

(c) EXPERTS AND CONSULTANTS.—Subject to such rules as may be issued by the Commission, the Chairperson may procure temporary and intermittent services of experts and consultants to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $200 a day for individuals.

(d) PERSONNEL DETAIL AUTHORIZED.—Upon request of the Chairperson, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title. Such detail shall be without interruption or loss of civil service status or privilege.

SEC. 17105. DUTIES OF THE COMMISSION.

The Commission shall—

(1) Identify barriers or obstacles to the development of energy resources on Indian lands, and make recommendations designed to foster the development of energy resources on Indian lands and promote economic development;

(2) develop proposals to address the dual taxation of the extraction of mineral resources on Indian lands;

(3) develop proposals for the promotion of vertical integration of the development of energy resources on Indian lands:

(4) make recommendations to improve the management, administration, accounting and auditing of royalties associated with the production of oil and gas on Indian lands; and

(5) develop proposals on taxation incentives to foster the development of energy resources on Indian lands including but not limited to investment tax credits and enterprise zone credits.

SEC. 17106. POWERS OF THE COMMISSION.

(a) HEARINGS.—For the purpose of carrying out this title, the Commission may hold hearings, take testimony, and receive evidence at such times and places as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(b) ADMINISTRATIVE PROVISION.—Any member or employee of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) INFORMATION.—The Commission may secure directly from any Federal agency such information as may be necessary to enable the Commission to carry out this title. Upon request of the Chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

SEC. 17107. REPORT.

The Commission shall prepare and transmit a report to the President, the Speaker of the House of Representatives, the Select Committee on Indian Affairs of the Senate, and the Committee on Energy and Natural Resources of the Senate within 12 months after funding for the operation of the Commission has been secured. The report shall contain the recommendations and proposals outlined in section 17105.

SEC. 17108. DEFINITION OF "INDIAN LANDS".

For the purposes of this title, the term "Indian lands" means lands that are owned by an Indian tribe or Alaska Native corporation or held in trust by the United States for the benefit of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

SEC. 17109. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

SEC. 17110. TERMINATION.

The Commission shall terminate 30 days after submitting the final report required by section 17107.

LEVIN (AND OTHERS) AMENDMENT NO. 1580

Mr. JOHNSTON (for Mr. LEVIN, for himself, Mr. COHEN, and Mr. GLENN) proposed an amendment to the bill S. 2166, supra, as follows:

Add at the end of subtitle B of title VI:

SEC. . Whenever the Federal Government establishes a new requirement or initiates a new procurement for the acquisition of electric lamps, electric ballasts, electric monitors and/or refrigeration equipment, the Federal Government shall, where cost effective, give preference to the procurement of the most energy efficient products available to meet its needs. The General Services Administration shall keep a record of the quantity, country of manufacture, and cost of items purchased under this subsection. The Secretary of Energy shall estimate the quantity and cost of energy saved annually due to this subsection.

SYMMS AMENDMENT NO. 1581

Mr. JOHNSTON. (for Mr. SYMMS) proposed an amendment to the bill S. 2166, supra, as follows:

On page 176, after line 22, insert the following new section:

SEC. .—USE OF WOOD-BURNING HEATING APPLIANCES FOR LOW INCOME WEATHERIZATION.—

Section 412(9) of the Energy Conservation and Production Act (42 U.S.C. 6862(9)) is amended by inserting the following new clause and relettering accordingly:

"( ) wood-heating appliances".

WELLSTONE AMENDMENT NO. 1582

Mr. JOHNSTON (for Mr. WELLSTONE) proposed an amendment to the bill S. 2166, supra, as follows:

On page 344, between lines 18 and 19, insert the following new section:

SEC. 13120. ENERGY SUBSIDY STUDY.

(a) IN GENERAL.—The Secretary shall contract with the National Academy of Sciences to conduct a study of energy subsidies that—

(1) are in effect on the date of enactment of this Act; or

(2) have been in effect prior to the date of enactment of this Act.

(b) Not later than 18 months after the date of enactment of this Act the Secretary shall transmit to the Congress the results of such study to be accompanied by recommendations for legislation, if any.

(c) CONTENTS.—

(1) IN GENERAL.—The study shall identify and quantify the direct and indirect subsidies and other legal and institutional factors that influence decisions in the marketplace concerning fuels and energy technologies.

(2) TOPICS FOR EXAMINATION.—The study shall examine—

(A) fuel and technology choices that are—

(i) available on the date of enactment of this Act; or

(ii) reasonably foreseeable on the date of enactment of this Act;

(B) production subsidies for the extraction of raw materials;

(C) subsidies encouraging investment in large capital projects;

(D) indemnification;

(E) fuel cycle subsidies, including waste disposal;

(F) government research and development support; and

(G) other relevant incentives and disincentives.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $500,000 for each of fiscal years 1993 and 1994.

GLENN AMENDMENT NO. 1583

Mr. JOHNSTON (for Mr. GLENN) proposed an amendment to the bill S. 2166, supra, as follows:

On page 23, line 20, amend section 4102 by adding after subsection (g) the new subsection (h) as follows:

"(i) Notwithstanding any other provision of this subtitle, the Postmaster General shall be exempt from the requirements of section 4102(b), 4102(c), and (4102(g), page 3, line 4, of the Glenn amendment)."

On page 20, line 21, amend as a new subsection (C) as follows:

"(C) For the purposes of section 4108, 4109, and 4110, a "covered person" shall include the Postmaster General."

McCAIN (AND DOMENICI) AMENDMENT NO. 1584

Mr. JOHNSTON (for Mr. McCAIN, for himself, and Mr. DOMENICI) proposed and amendment to the bill S. 2166, supra, as follows:

On page 18, line 6, after "electricity" strike ";" and replace with "including electricity from solar energy;"

WIRTH AMENDMENT NO. 1585

Mr. JOHNSTON (for Mr. WIRTH) proposed an amendment to the bill S. 2166, supra, as follows:

On page 157, line 4, strike the period and insert the following: ": provided that such energy conservation, energy efficiency resources and other demand side management measures are appropriately monitored and evaluated.".

HATFIELD AMENDMENT NOS. 1586 AND 1587

Mr. JOHNSTON (for Mr. HATFIELD) proposed two amendments to the bill S. 2166, supra, as follows:

AMENDMENT NO. 1586

On page 106, after line 20, insert the following new section 5308:

"SEC. 5308. Without further appropriation and without fiscal year limitation, the Secretaries of the Interior and Army are authorized to design, construct, operate and maintain generation additions, improvements and replacements, at their respective Federal projects in the Pacific Northwest Region as defined in the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), P.L. 96-501, 16 U.S.C. 839a(14), and to operate and maintain the respective Secretary's power facilities in the region that the Secretary determies necessary or appropriate and that the Bonneville Power Administrator subsequently determines necessary or appropriate, with any funds that the Administrator determines to make available to the respective Secretary for such purposes. Each Secretary is authorized, without further appropriation, to accept and use such funds for such purposes: *Provided*, That, notwithstanding any other provision of law, the receipts and disbursements of the Bonneville Fund and the expenditures of each Secretary from Fund transfers made pursuant to this section shall be exempt from any budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government, including any budget law deficit calculation, sequestration order or discretionary spending limit: *Provided further*, That this section shall not modify or affect the applicability of any provision of the Northwest Power Act. This provision shall be effective on October 1, 1993."

AMENDMENT NO. 1587

On page 104, after subsection (e), insert the following new subsection (f):

"(f) Without further appropriation and without fiscal year limitation and notwithstanding subsections (b) and (d) of this section, the Secretary of the Interior is authorized to design, construct, operate and maintain water conservation features that the Secretary and the Administrator of the Bonneville Power Administration determine necessary or appropriate at Federal Reclamation projects in the Pacific Northwest Region as defined in the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), P.L. 96-501, 16 U.S.C. 839a(14) pursuant to subsection (a), with any funds that the Administrator determines to make available to the Secretary for such purposes. The Secretary is authorized, without further appropriation, to accept and use such funds for such purposes: *Provided*, That, notwithstanding any other provision of law, the receipts and disbursements of the Bonneville Fund and the expenditures of the Secretary from Fund transfers made pursuant to this subsection shall be exempt from any budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government, including any budget law deficit calculation, sequestration order or discretionary spending limit: *Provided further*, That this section shall not modify or affect the applicability of any provision of the Northwest Power Act. This provision shall be effective on October 1, 1993."

JOHNSTON AMENDMENT NO. 1588

Mr. JOHNSTON proposed an amendment to amendment No. 1544 proposed by Mr. GLENN to the bill S. 2166, supra, as follows:

Amend as Johnston second degree amendment to Glenn amendment No. 1544, page 5, line 23, as new subsections (d) and (e) in section 4111 the following:

"(d) POSTAL SERVICE COORDINATION.—To the maximum extent practicable, the Postmaster General shall coordinate its alternative fuel vehicle procurement, placement, refueling, and maintenance programs with those at the Federal, State, and local level. The Postmaster General shall communicate, share, and disseminate, on a regular basis, information on such programs with the Secretary, the Administrator, and heads of appropriate Federal agencies."

"(e) POSTAL SERVICE PROGRAM CRITERIA.—The Postmaster General shall consider the following criteria in the procurement and placement of alternative fuel vehicles:

"(1) the procurement plans of State and local governments and other public and private institutions;

"(2) the current and future availability of refueling and repair facilities;

"(3) the reduction in emissions of the Postal fleet;

"(4) whether the vehicle is to be used in a nonattainment area as specified in the Clean Air Act of 1990;

"(5) the operational requirements of the Postal fleet;

"(6) the contribution to the reduction in the consumption of oil in the transportation sector."

GORE AMENDMENT NO. 1589

Mr. GORE proposed an amendment to the bill S. 2166, supra, as follows:

On page 12, line 19 after "change," insert "pursuant to which industrialized countries, including the United States shall commit to stabilizing their emissions of carbon dioxide at 1990 levels by the year 2000,".

RIEGLE AMENDMENTS NOS. 1590 AND 1591

Mr. JOHNSTON (for Mr. RIEGLE) proposed two amendments to the bill S. 2166, supra, as follows:

AMENDMENT NO. 1590

At the appropriate place, insert the following new title:

TITLE —VEHICLE FUEL EFFICIENCY RESEARCH AGREEMENT

SEC. 01. DEFINITIONS.

As used in this title:

(1) AGREEMENT.—The term "Agreement" means the Fuel Efficiency Research Agreement described in this title.

(2) LABORATORY.—The term "laboratory" has the same meaning as is provided in section 12(d)(2) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)).

(3) VEHICLE.—The term "vehicle" means a passenger vehicle or light truck.

SEC. 02. AGREEMENT.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall offer to enter into a cooperative research and development agreement with non-Federal parties described in subsection (b) pursuant to section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a), to be known as the "Vehicle Fuel Efficiency Research Agreement", to provide for research and development of technology to enhance the fuel efficiency of vehicles through cooperative multi-industrial teams, cost-sharing, and

other activities considered appropriate by the Secretary.

(b) MEMBERSHIP.—The non-Federal parties to an Agreement shall be representatives of private United States corporations that manufacture large quantities of vehicles (as determined by the Secretary).

SEC. 03. TERMS.

(a) IN GENERAL.—Subject to the other provisions of this section, an Agreement shall provide for—

(1) the development of materials and manufacturing techniques for advanced lightweight structural components for vehicles;

(2) the development of efficient ancillary systems, including air conditioning, heating, lighting, and windows, that reduce the energy requirements of vehicles and that have less adverse environmental impact than systems in use on the date of enactment of this Act;

(3) the development of a system trade-off design for hybrid electric vehicles, including—

(A) propulsion systems integration;

(B) heat engine types and sizes;

(C) battery and engine interfaces;

(D) control system requirements; and

(E) electrical component requirements;

(4) the acceleration of the evaluation of the feasibility of, the development of, and the integration into vehicles of advanced propulsion systems, including the automotive gas turbine engine and fuel cells;

(5) the initiation of a ceramic technology insertion program for near-term application in current engine designs in order to improve fuel efficiency and reduce emissions; and

(6) the initiation of an advanced catalyst development program to consider new materials developments and alternative fuels utilization.

(b) AVOIDANCE OF DUPLICATION.—The Secretary shall ensure that the activities undertaken pursuant to an Agreement as described in subsection (a)—

(1) supplement the fuel efficiency research and development of private industry and do not duplicate, displace, or reduce the quantity of the research and development; and

(2) do not duplicate research and development conducted pursuant to—

(A) the Automotive Propulsion Research and Development Act of 1978 (15 U.S.C. 1701 et seq.); and

(B) the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (15 U.S.C. 2501 et seq.).

(c) PROTECTION OF CLASSIFIED INFORMATION.—The Secretary, in consultation with the Secretary of Defense, shall take such actions as are necessary to prevent the dissemination of classified information (including information whose dissemination could reasonably be expected to have an adverse effect on the common defense and security) as a result of activities carried out under this section.

(d) USE OF CERTAIN DEPARTMENT OF DEFENSE FACILITIES.—The Secretary of Defense shall permit the parties to an Agreement to use the facilities and services of any laboratory under the jurisdiction of the Department of Defense that the Secretary of Defense determines will assist the parties in carrying out an Agreement.

SEC. 04. FUNDING.

In each fiscal year, the Secretary shall pay the Federal share of the costs incurred through an Agreement. The Federal share shall be 50 percent.

SEC. 05. ANNUAL REPORT.

The Secretary shall submit to Congress annually a report on all activities being carried out pursuant to this title.

SEC. 06. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—Subject to subsection (b), there are authorized to be appropriated such sums as are necessary to carry out this title for each of fiscal years 1993 through 1995, to be available without fiscal year limitation.

(b) LIMITATION.—The sums shall not exceed $350,000,000 for the 3-year period.

AMENDMENT NO. 1591

"SEC. . LIMITS ON PARTICIPATION BY COMPANIES

A company shall be eligible to receive financial assistance under this Act only if—

"(a) the Secretary finds that the company's participation in the Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goal of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

"(b) either—

"(1) the company is a United States-owned company; or

"(2) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

RIEGLE (AND OTHERS) AMENDMENT NO. 1592

Mr. JOHNSTON (for Mr. RIEGLE, for himself, Mr. DODD, Mr. KERRY, Mr. BRYAN, Mr. LEVIN, Mr. DOMENICI, and Mr. BRADLEY) proposed an amendment to the bill S. 2166, supra, as follows:

On page 387, strike lines 9 through 18 and insert the following:

SEC. 15105. PROTECTION AGAINST ABUSIVE AFFILIATE TRANSACTIONS; STATE AUTHORITIES; FEDERAL RESTRICTION; RECIPROCAL ARRANGEMENTS PROHIBITED.

(a) IN GENERAL.—An electric utility company may not enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator if the exempt wholesale generator is an affiliate or associate company of the electric utility company.

(b) STATE AUTHORITY TO EXEMPT FROM PROHIBITION.—Notwithstanding subsection (a), an electric utility company may enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator that is an affiliate or associate company of the electric utility company if every State commission having jurisdiction over the retail rates of such electric utility company makes a specific determination in advance of the electric utility company entering into such contract that the transaction will benefit consumers, is in the public interest, and does not violate any State law (including where applicable, least cost planning).

(c) SALE JUST AND REASONABLE.—A rate or charge for the sale of electric energy at wholesale in interstate commerce by an exempt wholesale generator shall not be considered just and reasonable within the meanings of sections 205 and 206 of the Federal Power Act if the rate or charge allows the exempt wholesale generator to receive any unfair advantage resulting from the fact that the purchaser of such electric energy is an affiliate or associate company of such exempt wholesale generator.

(d) RECIPROCAL ARRANGEMENTS PROHIBITED.—Reciprocal arrangements among companies that are not affiliates or associate companies of each other that are entered into in order to avoid the provisions of this section are prohibited.

On page 387, lines 24 and 25, strike "on grounds of prudence or imprudence".

On page 392, strike line 12 and all that follows through "may include:" on line 20, and insert the following:

SEC. 15108. STATE COMMISSION ACCESS TO BOOKS AND RECORDS; PUBLIC ACCESS TO RECORDS AND INFORMATION; DEFINITION.

(a) ACCESS TO BOOKS AND RECORDS.—Each affected State commission shall have continuing and periodic access to relevant financial and other records of the exempt wholesale generator and any electric utility company that is an affiliate or associate company of such exempt wholesale generator relevant to the exercise of such affected State commission's authority. The records to be provided hereunder shall be specified by the affected State commission and may include:

On page 393, line 4, insert "of the exempt wholesale generator or any electric utility company that is an affiliate or associate company of such exempt wholesale generator that are" before "relevant".

On page 393, line 5, strike the colon and all that follows through line 8, and insert a period.

On page 394, strike lines 12 through 14, and insert the following:

(c) NONPREEMPTION.—Nothing in this section shall—

(1) preempt applicable State law concerning the provision of records and other information; or

(2) in any way limit rights to obtain records and other information under Federal law, contracts, or otherwise.

WALLOP AMENDMENT NO. 1593

Mr. WALLOP proposed an amendment to the bill S. 2166, supra, as follows:

On page 388, line 3, following the word "*Provided*," insert the following: "That the state commission shall have no authority to determine the reasonableness of the wholesale rate or charge (and the terms and conditions thereof): *Provided further*,".

BINGAMAN AMENDMENT NO. 1594

Mr. BINGAMAN proposed an amendment to the bill S. 2155, supra as follows:

On page 7, line 10, insert "reduce oil imports," before "maximize".

On page 7, line 12, strike "and".

On page 8, line 5, strike the period and insert "; and".

On page 8, between lines 5 and 6, insert the following new paragraph:

(4) the achievement of energy security for the United States will require that a long-term, comprehensive national energy policy be established and sustained.

On page 10, line 1, insert "Climate Protection" before "Goals".

On page 10, line 3, insert "CLIMATE PROTECTION" before "GOALS AND".

On page 13, line 18, strike "and".

On page 13, line 21, strike the period and insert "; and".

On page 13, between lines 21 and 22, insert the following new subparagraph:

(C) the energy efficiency, renewable energy, and oil reduction goals described in subtitle C.

On page 16, between lines 17 and 18, insert the following new subtitle:

Subtitle C—Energy Goals

SEC. 1301. ENERGY GOALS.

(a) IN GENERAL.—In order to focus and sustain a national effort toward achieving national energy security in an environmentally responsible manner, the United States should pursue the national energy goals listed in subsection (b) (referred to in this subtitle as "energy goals").

(b) GOALS.—

(1) REDUCED OIL CONSUMPTION.—The oil consumption of the United States should be reduced from the 1990 level of approximately 40 percent of the total United States energy resource consumption to 39 percent by 1995, 37 percent by 2000, 35 percent by 2005, and 33 percent by 2010.

(2) REDUCED OIL IMPORTS.—The annual net oil imports of the United States should be limited to 50 percent or less of United States oil consumption.

(3) INCREASED ENERGY EFFICIENCY.—The energy efficiency of the United States should be increased to 10 percent over the 1990 levels by 1995, 20 percent over the 1990 levels by 2000, 30 percent over the 1990 levels by 2005, and 40 percent over the 1990 levels by 2010.

(4) INCREASED UTILIZATION OF RENEWABLE ENERGY.—The portion of the energy consumption represented by renewable energy sources should increase from the 1990 level of approximately 8 percent to 9 percent in 1995, 10 percent in 2000, 12 percent in 2005, and 14 percent in 2010.

SEC. 1302. REPORTS.

(a) INITIAL REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit a report to Congress setting forth a plan for the achievement of the energy goals.

(2) CONTENTS.—In the report, the Secretary shall—

(A) make recommendations as to any additional statutory or budget authority that the Secretary determines is necessary to achieve the energy goals;

(B) describe the measures of energy efficiency that the Secretary has determined to be appropriate for each end use sector; and

(C) describe the plans developed by the Secretary for acquiring the necessary data to be used in determining the energy efficiency of each end use sector.

(b) PROGRESS REPORTS.—

(1) IN GENERAL.—Every 2 years after the initial report is submitted pursuant to subsection (a), the Secretary shall submit to Congress a report, separate from the National Energy Policy Plan submitted pursuant to section 801 of the Department of Energy Organization Act (42 U.S.C. 7321), detailing the progress of the United States towards achieving the energy goals.

(2) CONTENTS.—In the report, the Secretary shall—

(A) analyze the progress towards meeting the energy goals, and, if an energy goal is not being met, identify barriers to the achievement of the goal; and

(B) make recommendations as to any change in statutory or budget authority that the Secretary determines is necessary for the timely achievement of the energy goals.

(c) ALTERNATIVE ENERGY GOALS.—If at any time the Secretary determines that achievement of the energy goals is impracticable, the Secretary shall, in the next report submitted pursuant to this section—

(1) state the reasons and provide an analysis for the determination; and

(2) propose alternate energy goals that the Secretary determines to be practicable.

INOUYE (AND AKAKA) AMENDMENT NO. 1595

Mr. JOHNSON (for Mr. INOUYE, for himself and Mr. AKAKA) proposed an amendment to the bill S. 2166, supra, as follows:

At the end of the bill, add the following new section:

SEC. 16102. EMERGENCY PETROLEUM SUPPLY.

(a) SHORT TITLE.—This section may be cited as the "Emergency Petroleum Supply Act".

(b) REGIONAL PETROLEUM RESERVE.—Section 157(a) of the Energy Policy and Conservation Act (42 U.S.C. 6237(a)) is amended—

(1) by designating the first and second sentences as paragraph (1); and

(2) by adding at the end the following new paragraph:

"(2) For the purpose of carrying out this section—

"(A) any State that is an island shall be considered to be a separate Federal Energy Administration Region, as defined in title 10, Code of Federal Regulations, as in effect on November 1, 1975;

"(B) determinations made with respect to Regions, other than States that are islands, shall be made as if the islands were not part of the Regions; and

"(C) with respect to determinations made for any State that is an island, the term 'refined petroleum product' shall have the same meaning as the term defined in section 3(3).".

(c) PURCHASES FROM THE STRATEGIC PETROLEUM RESERVE BY ENTITIES IN ELIGIBLE INSULAR AREAS.—Section 161 of such Act (42 U.S.C. 6241) is amended by adding at the end the following new subsection:

"(j)(1)(A) The provisions listed in subparagraph (B) shall apply with respect to each offering of a quantity of a petroleum product during a drawdown of the Strategic Petroleum Reserve.

"(B)(i)(I) Subject to subclause (II), a purchaser located in an eligible insular area, in addition to having the opportunity to submit a competitive bid, may submit (at the time bids are due) a binding offer to purchase a category of petroleum product specified in a notice of sale, and shall thereupon be obligated to purchase the petroleum product at a price equal to the average of the successful bids made for the remaining quantity of the petroleum product within the category that is the subject of the offering.

"(II) A binding offer made pursuant to subclause (I) shall be accompanied by a certification made by the Governor or other chief executive officer of the eligible insular area that the petroleum product is necessary to avert a critical supply shortage in the eligible insular area.

"(ii)(I) Subject to subclause (II), a vessel that arrives at a delivery line of the Strategic Petroleum Reserve to take on a petroleum product for delivery to a purchaser located in an eligible insular area shall be loaded ahead of other vessels waiting for delivery if the Governor or other chief executive officer of the eligible insular area has certified that delivery must be expedited in order to avert a critical supply shortage in the eligible insular area.

"(II) The Secretary may waive the priority loading requirement of subclause (I) with respect to a particular vessel waiting for delivery if the Secretary determines that the requirement is impracticable.

"(2)(A) In administering this subsection, and with regard to each offering, the Secretary shall—

"(i) impose the limitation listed in clause (i) or (ii) of subparagraph (B), whichever results in the purchase of the lesser quantity; and

"(ii) at the request of a purchaser, adjust upward, to the next whole-number increment of a full tanker load, the quantity to be sold to the purchaser if the quantity is less than 50 percent less than a whole-number increment of a full tanker load of a petroleum product.

"(B)(i) The Secretary shall limit the quantity that any one purchaser may purchase through a binding offer at any one offering to 1/12 of the total quantity of petroleum products that the purchaser imported during the previous year.

"(ii)(I) The Secretary shall limit the quantity that may be purchased through binding offers at any one offering to 3 percent of the offering.

"(II) If the Secretary imposes the limitation listed in subclause (I), the Secretary shall prorate the quantity among the purchasers who submitted binding offers.

"(3)(i) Except as provided in clause (ii), petroleum products purchased through binding offers pursuant to this subsection shall be delivered to the eligible insular area.

"(ii) Purchasers may enter into exchange or processing agreements that require delivery to other locations.

"(4) As used in this subsection:

"(A) The term 'eligible insular area' means the State of Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(B) The term 'offering' means a solicitation for bids—

"(i) that is to be submitted not later than any specified day for a quantity or quantities of a petroleum product from a delivery line of the Strategic Petroleum Reserve; and

"(ii) for a distribution with respect to which the President has made a finding pursuant to subsection (d).".

DOMENICI AMENDMENT NO. 1596

Mr. DOMENICI proposed an amendment to the bill S. 2166, supra, as follows:

At the appropriate place, insert the following:

SEC. .

The United States is the largest consumer of oil in the world exhausting 17 million barrels of oil per day, a 14-percent increase since 1983.

The United States' domestic production is in decline, estimated to fall below nine million barrels of oil per day by 1995. Today, oil imports have risen to over 40 percent of con-

sumption, exacerbating our nation's negative balance of trade.

The Persian Gulf War commands attention to the fact that over 25 percent of America's gross oil imports are shipped from the Persian Gulf, and this reliance is the achilles heel of our nation's energy and economic security.

In the United States, the transportation sector accounts for 63 percent of total oil consumption.

The Office of Technology Assessment estimates that the United States could displace 555,000 barrels of oil per day in the transportation sector by utilizing alternative fuels like compressed natural gas, electric vehicles, traffic management systems, and by reducing the number of gas guzzling vehicles on the road.

Natural gas is a clean burning, abundant, and inexpensive national resource that could displace oil consumption in 25 percent of the current fleet vehicle population over ten years, reducing imported oil by 240,000 barrels per day.

The United States taxpayers have invested significant resources in the development of alternative transportation fuels, electric vehicles, and traffic technologies, at our nation's laboratories, universities, and in private industry.

Both American Government and industry have met great success in the utilization of existing natural gas and electric vehicle fleets.

Encouraging Government and industry to convert to the use of energy efficient, alternative transportation fleets complements our national goals of energy independence, clean air, reduced balance of trade, and technology transfer.

The pace of improvement of clean and efficient alternative technologies is directly correlated to the level of investment in research and development.

Therefore, the Senate finds that it is in the Nation's best interest to assist the market and accelerate the adoption of alternative nonoil transportation fuels, vehicles, and traffic management systems, and the Senate will readdress this position during consideration of the appropriate tax legislation.

DOMENICI (AND OTHERS) AMENDMENT NO. 1597

Mr. DOMENICI (for himself, Mr. INOUYE, and Mr. DECONCINI) proposed an amendment to the bill S. 2166, supra, as follows:

In title VI, subtitle E, on page 176, after line 22, insert the following new section:

SEC. 6508. PROMOTING ENERGY RESOURCE DEVELOPMENT AND ENERGY VERTICAL INTEGRATION ON INDIAN RESERVATIONS.

(a) DEMONSTRATION PROGRAMS.—The Secretary of Energy, in conjunction with the Secretary of the Interior, shall establish and implement a demonstration program to assist Indian tribes that wish to achieve self-determination in the energy area and that wish to promote the development of a vertically integrated energy industry on their reservations, in order to increase development of the substantial energy resources located on Indian reservations. Said program shall include but not be limited to the following components:

(1) The Secretary shall provide development grants to tribal governments to assist them to establish the legal and governmental infrastructure and obtain the managerial and technical capability they need to develop the energy resources on their reservations by themselves or through 51 percent or more tribally owned and controlled joint ventures. Each grant shall be for a period of three years.

(2) The Secretary shall provide matching grants, not to exceed 50 percent of the project costs, for projects located on Indian reservations that promote the vertical integration of the energy resources on Indian reservations, including but not limited to—oil refineries, the generation of electricity, natural gas distribution, and innovative uses of coal.

(3) The Secretary shall provide technical assistance and such other assistance as is appropriate to tribes on energy resource development and on the vertical integration of reservations energy resources.

(b) AUTHORIZATIONS.—There is hereby authorized to be appropriated $5,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of section (a)(1) and $10,000,000 for each of the fiscal years 1992, 1993 and 1994 to carry out the purposes of section (a)(2).

GORE AMENDMENTS NOS. 1599 AND 1600

Mr. JOHNSTON (for Mr. GORE) proposed two amendments to the bill S. 2166, supra, as follows:

AMENDMENT NO. 1599

On page 144, after line 17, insert the following new section:

SEC. 6112. REPORT ON THE POTENTIAL OF COOPERATIVE ADVANCED APPLIANCE DEVELOPMENT.

(1) Within 12 months after the date of enactment of this Act, the Secretary of Energy shall, in consultation with utilities and appliance manufacturers, prepare, and submit to Congress, a report on the potential for the development and commercialization of appliances which are substantially more efficient than required by Federal or State law.

(2) Such report shall identify candidate high-efficiency appliances which meet the following criteria:

(A) that, the potential exists for substantial improvement in the appliance's energy efficiency, beyond the minimum established in Federal and State law;

(B) that there is the potential for significant energy savings at the national or regional level;

(C) that, such appliances are likely to be cost-effective for consumers;

(D) that, electric, water, or gas utilities are prepared to support and promote the commercialization of such appliances; and

(E) that, manufacturers are unlikely to undertake development and commercialization of such appliances on their own, or development and production would be substantially accelerated by support to manufacturers.

(3) The plan shall also:

(A) describe the general actions the Secretary of energy could take to coordinate and assist utilities and appliance manufacturers in developing and commercializing highly efficient appliances;

(B) describe specific proposals for Department of Energy assistance to utilities and appliance manufacturers to promote the development and commercialization of highly efficient appliances;

(C) identify methods by which Federal purchase of highly efficient appliances could assist in the development and commercialization of such appliances; and

(D) identify the funding levels needed to develop and implement a Federal program to assist in the development and commercialization of highly efficient appliances.

AMENDMENT NO. 1600

At the end of title VI, Subtitle 3, add the following new section:

SEC. . ENERGY ANALYSIS AND DIAGNOSTIC CENTERS PROGRAM

(a) ESTABLISHMENT.—The Secretary shall establish within the Department of Energy an Energy Analysis and Diagnostic Centers program designed to assist qualifying commercial and industrial facilities to conserve energy and reduce operating costs by applying efficient technologies to their operations and buildings and to provide opportunities for students to gain experience in the field of energy management.

(b) QUALIFYING COMMERCIAL AND INDUSTRIAL FACILITIES.—For purposes of this section, qualifying commercial and industrial facilities are those facilities that meet at least three of the following four criteria:

(1) 500 or fewer employees;

(2) gross sales of not more than $75 million per year;

(3) total energy costs of not more than $1.75 million per year;

(4) an absence of in-house energy expertise.

(c) ADMINISTRATION.—(1) Not later than 6 months after the date of enactment of this section, the Secretary shall seek to enter into a management agreement with an appropriate institution to administer the program.

(2) For purposes of this section, an appropriate institution is a nonprofit institution with demonstrable expertise in engineering, physical science, communications, business and such other disciplines as appropriate and with expertise in industrial manufacturing including new processes and product research and development.

(d) SOLICITATIONS FOR PROJECT PROPOSALS.—(1) Within 9 months after the date of enactment of this section, the administering institution shall, under the direction of the Secretary and through a competitive bidding process select not less than 25 sites to be designated Energy Analysis and Diagnostic Centers. The sites shall be educational institutions such as universities, engineering and technical schools and other institutions of higher learning with demonstrable capability to—

(A) perform energy audits for qualifying industrial facilities designed to assist such facilities to reduce their energy consumption and improve the efficiency of their energy usage;

(B) provide detailed reports to the qualifying industrial facility identifying energy conservation and efficiency opportunities;

(C) provide such other service as the Secretary deems appropriate.

(e) DISSEMINATION OF INFORMATION.—Not less than every 12 months, the administering institutions shall synthesize from the reports of the Energy Analysis and Diagnostic Centers and make publicly available information concerning significant energy conservation opportunities: *Provided, however,* That all proprietary information shall be kept confidential.

GORE (AND METZENBAUM) AMENDMENT NO. 1601

Mr. JOHNSTON (for Mr. GORE, for himself, Mr. METZENBAUM, and Mr. JEFFORDS) proposed an amendment to the bill S. 2166, supra, as follows:

Add at the end of title VI, the following new section:

SEC. 6506. GRANTS TO STATES TO PROMOTE UTILITY INDUSTRIAL EFFICIENCY PROGRAMS.

(a) Definitions the purpose of this section—

(1) the term "covered industry" means the food and food products industry, lumber and wood products industry, petroleum and coal products industry, and all other manufacturing specified in Standard Industrial Classification Codes 20 through 39 (or successor classification codes);

(2) the term "industrial audit" means—

(A) identification of opportunities in the production process (from the introduction of materials to final packaging of the product for shipping) for—

(i) improving energy efficiency

(ii) reducing environmental waste; and

(iii) technological improvements designed to increase competitiveness and achieve cost-effective product quality enhancement;

(B) identification of opportunities for improving the energy efficiency of lighting, heating, ventilation, air conditioning, and building envelope systems operating outside of the production process; and

(C) the identification of opportunities for using renewable energy technology both in the production process and in the systems described in subparagraph (B);

(3) the term "Secretary" means the Secretary of Energy; and

(4) the term "Utility" means any person, State agency (including any municipality), or Federal agency, which sells electric or gas energy.

(b) GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary may make grants to States which pursuant to State laws,

(A) require utilities to provide financial and technical assistance to cover industries; and

(B) offer incentives to utilities for providing such assistance.

(2) ELIGIBILITY CRITERIA.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall establish eligibility criteria for grants awarded under subsection (a). Such criteria shall require a State applying for a grant to demonstrate that such state, by state legislation or regulation—

(A) requires utilities to provide to covered industries served—

(i) industrial energy audits; and

(ii) financial incentives for implementing energy efficiency improvements; and

(B) allows utilities providing such assistance to—

(i) recover the costs of providing industrial audits; and

(ii) receive a reasonable rate of return of financial incentives provided.

(3) USE OF FUNDS.—Grants made pursuant to this section shall be used by a State to—

(A) To make available to covered industries, through appropriate institutions such as Universities, nonprofit organizations, State and local government entities, and technical centers, information on energy efficient technologies;

(B) establish programs to train individuals in industrial energy audits; and

(C) assist utilities in developing, testing and evaluating energy efficiency programs and technologies for industrial customers.

(4) ALLOCATION OF FUNDS.—Grants made pursuant to this section shall be allocated each fiscal year among States meeting the criteria of subsection (b) who have submitted applications 60 days before the first day of such fiscal year. Such allocation shall be made in accordance with a formula to be prescribed by the Secretary based on each such State's share of value added in industry (as determined by the Census of Manufactures) as a percentage of the value added by all such States.

(5) COORDINATION WITH ENERGY ANALYSIS AND DIAGNOSTIC CENTERS.—In carrying out the functions describe in subsection (c), States shall, to the extent practicable, coordinate such functions with activities and programs conducted by the Energy Analysis and Design Centers of the Department of Energy.

(c) OTHER FEDERAL ASSISTANCE.—

(1) DIRECTORY.—The Secretary shall establish a nationwide directory of organizations experienced in emerging energy efficiency and waste reduction technologies. Such directory shall be made available to interested parties.

(d) REPORTS.—

(1) ANNUAL REPORT.—Not later than one year after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to the Congress a report which—

(A) identifies barriers encountered in implementing the Act;

(B) makes recommendations for overcoming such barriers; and

(C) documents the results achieved as a result of the programs established and grants awarded pursuant to this Act.

(2) OTHER REPORT.—Not later than two years after the date of the enactment to this Act, the Secretary shall submit to the Congress a report which reviews any difficulties encountered by industry in implementing energy efficiency improvements recommended as a result of programs established pursuant to this Act;

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purpose of this section.

WIRTH (AND JOHNSTON) AMENDMENT NO. 1602

Mr. JOHNSTON (for Mr. WIRTH, for himself and Mr. JOHNSTON) proposed an amendment to the bill S. 2166, supra, as follows:

Page 127, line 18, insert "(a)" before "title III".

Page 128, lines 1-2, after "air-cooled" add ", watercooled, evaporatively cooled, or water-source (not including ground water source)".

Page 128, lines 8-9, after "air-cooled" add ", water-cooled, evaporatively cooled, or water-source (not including ground water source)".

Page 128, line 20, After line 20 add the following:

(5) the term "packaged terminal air conditioner" means a wall sleeve and a separate unencased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability energy;

(6) the term "packaged terminal heat pump" means a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source and should have supplementary heating availability by builder's choice of energy;

(7) the term "warm air furnace" means a self-contained oil- or gas-fired furnace designed to supply heated air through ducts to spaces that require it. For purposes of this section, the term warm air furnace includes combination warm air furnace/electric air-conditioning units but excludes unit heaters, ductfurnaces and units covered by Section 321(a) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a));

(8) the term "packaged boiler" means a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections. For purposes of this section, the term packaged boiler excludes units covered by section 321(a) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a));

(9) the term "storage water heater" means a water heater that heats and stores water within the appliance at a thermostatically controlled temperature for delivery on demand. For purposes of this section, the term storage water heater excludes (a) units with an input rating of 4000 Btu per hour or more per gallon of stored water; and (b) units covered by Section 321(a) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a));

(10) The term "instantaneous water heater" means a water heater that has an input rating of at least 4000 Btu per hour per gallon of stored water. For purposes of this section, the term instantaneous water heater excludes units covered by Section 321(a) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a)); and

(11) The term "unfired hot water storage tank" means a tank used to store water that is heated externally.

Page 128, line 24 through page 129, line 1. Strike the following: "lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment;".

Page 129 lines 18-20. Strike lines 18-20 and substitute the following therefor: "those lamps, motors, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air-conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks for which specific efficiency standards are established by this Act. In addition, the Secretary shall, within 18 months after the date of enactment of this Act, prescribe test procedures for those utility distributions".

Page 130, line 7. Just before "for which" add the following: "packaged terminal air-conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks".

Page 130, line 18. At end of line add the following: ", packaged terminal air-conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks".

Page 131, lines 9-12, strike the following: "lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and".

Page 131, lines 15-18, strike the following: "lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment,".

Page 131, lines 20-22, strike "Except as provided in subsections (d)(3)(B) and (d)(3)(C) of this section".

Page 132, line 1, after "establishing" delete "these"; and after "standards" insert "for utility distribution transformers".

Page 132, line 2, change "take into consideration" to "use".

Page 132, line 4, after "establishing" strike "these"; and after "standards" insert "for utility distribution transformers".

Page 132, lines 13–14, strike "for which the Secretary establishes standards pursuant to this section".

Page 132, line 21, insert "air-cooled" after "of".

Page 133, line 2, insert "air-cooled" after "of".

Page 133, line 7, insert "air-cooled" after "of".

Page 133, line 15, insert "air-cooled" after "of".

Page 133, line 20, insert "air-cooled" after "of".

Page 133, line 25, insert "air-cooled" after "of".

Page 134, line 5. After line 5 insert the following:

(vii) The minimum energy efficiency ratio of water-cooled, evaporatively-cooled and water-source central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity) shall be 9.3 (at a standard rating of 95 degrees Fahrenheit, dry bulb (F db), outdoor temperature for evaporatively cooled equipment, and 85 degrees Fahrenheit entering water temperature for water-source and water-cooled equipment) for products manufactured on or after January 1, 1994.

(viii) The minimum energy efficiency ratio of water-cooled, evaporatively-cooled and water-source central air conditioners and central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 10.5 (at a standard rating of 95 degrees Fahrenheit, dry bulb (F db), outdoor temperature for evaporatively cooled equipment, and 85 degrees Fahrenheit entering water temperature for water-source and water-cooled equipment) for products manufactured on or after January 1, 1994.

(ix) The minimum coefficient of performance of water-source heat pumps less than 135,000 Btu per hour (cooling capacity) shall be 3.8 (at a standard rating of 70 degrees Fahrenheit entering water) for products manufactured on or after January 1, 1994.

Page 134, lines 7–8, strike "for which the Secretary establishes standards pursuant to this section".

Page 134, line 14, insert "air-cooled" after "of".

Page 134, line 22, insert "air-cooled" after "of".

Page 135, line 2, after line 2 insert the following:

(iii) The minimum energy efficiency ratio of water- and evaporatively-cooled central air conditioners and central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 9.6 (according to ARI Standard 360–86) for products manufactured on or after January 1, 1995.

(D) For packaged terminal air conditioners and packaged terminal heat pumps the Secretary shall establish standards at the standard levels set forth for such products in ASHRAE/IES Standard 90.1 as in effect on the date of enactment of this Act. Such standards shall become effective for such products manufactured on or after January 1, 1994. Such standard levels shall be as follows:

(i) The minimum energy efficiency ratio of packaged terminal air conditioners and packaged terminal heat pumps in the cooling mode shall be 10.0 − (0.16 × Capacity [in thousands of Btu per hour]) EER (at a standard rating of 95 degrees Fahrenheit, dry bulb (F db), outdoor temperature) for products manufactured on or after January 1, 1994. If a unit has a capacity of less than 7000 Btu per hour, then 7000 Btu per hour shall be used in the calculation. If a unit has a capacity of greater than 15,000 Btu per hour, then 15,000 Btu per hour shall be used in the calculation.

(ii) The minimum coefficient of performance of packaged terminal heat pumps in the heating mode shall be 1.3+(0.16 × the minimum cooling EER as specified in subparagraph (i) at a standard rating of 47 degrees Fahrenheit, dry bulb (F db)) for products manufactured on or after January 1, 1994.

(E) For warm air furnaces and packaged boilers the Secretary shall establish standards at the standard levels set forth for such products in ASHRAE/IES Standard 90.1 as in effect on the date of enactment of this Act. Such standards shall become effective for such products manufactured on or after January 1, 1994. Such standard levels shall be as follows:

(i) The minimum thermal efficiency at the maximum rated capacity of gas-fired warm-air furnaces with capacity of 225,000 Btu per hour or more shall be 80 percent for products manufactured after January 1, 1994.

(ii) The minimum thermal efficiency at the maximum rated capacity of oil-fired warm-air furnaces with capacity of 225,000 Btu per hour or more shall be 81 percent for products manufactured after January 1, 1994.

(iii) The minimum combustion efficiency at the maximum rated capacity of gas-fired packaged boilers with capacity of 300,000 Btu per hour or more shall be 80 percent for products manufactured after January 1, 1994.

(iv) The minimum combustion efficiency at the maximum rated capacity of oil-fired packaged boilers with capacity of 300,000 Btu per hour or more shall be 83 percent for products manufactured after January 1, 1994.

(F) For storage water heaters, instantaneous water heaters, and unfired water storage tanks the Secretary shall establish standards at the standard levels set forth for such products in ASHRAE/IES Standard 90.1–1989 addendum b. Such standards shall become effective for such products manufactured on or after January 1, 1994. Such standard levels shall be as follows:

(i) Except as provided in subparagraph (vii), the maximum standby loss, in percent per hour, of electric storage waste heaters shall be 0.30+(27/Measured Storage Volume [in gallons]) for products manufactured on or after January 1, 1994.

(ii) Except as provided in subparagraph (vii), the maximum standby loss, in percent per hour, of gas- and oil-fired storage water heaters with input ratings of 155,000 Btu per hour or less shall be 1.30+(114/Measured Storage Volume [in gallons]) for products manufactured on or after January 1, 1994. The minimum thermal efficiency of such units shall be 78 percent (at a 70 degree Fahrenheit water temperature difference).

(iii) Except as provided in subparagraph (vii), the maximum standby loss, in percent per hour, of gas- and oil-fired storage water heaters with input ratings of more than 155,000 Btu per hour shall be 1.30+(95/Measured Storage Volume [in gallons]) for products manufactured on or after January 1, 1994. The minimum thermal efficiency of such units shall be 78 percent (at a 70 degree Fahrenheit water temperature difference).

(iv) The minimum thermal efficiency of instantaneous water heaters with a storage volume of less than 10 gallons shall be 80 percent (at a 70 degree Fahrenheit water temperature difference) for units manufactured on or after January 1, 1994.

(v) Except as provided in subparagraph (vii), the minimum thermal efficiency of instantaneous water heaters with a storage volume of 10 gallons or more shall be 77 percent (at a 70 degree Fahrenheit water temperature difference) for units manufactured on or after January 1, 1994. The maximum standby loss, in percent/hour, of such units shall be 2.30+(67/Measured Storage Volume [in gallons]).

(vi) Except as provided in subparagraph (vii), the maximum heat loss of unfired hot water storage tanks shall be 6.5 Btu per hour per square foot of tank surface area (at an 80 degree Fahrenheit water-air temperature difference).

(vii) Storage water heaters and hot water storage tanks having more than 140 gallons of storage capacity need not meet the standby loss or heat loss requirements specified in subparagraphs (i) through (iii) and subparagraphs (v) through (vi) if the tank surface area is thermally insulated to R–12.5 and if a standing pilot light is not used.

Page 135, line 3, change "(D)" to "(G)".

Page 135, line 7, change "or" to ".".

Page 135, line 3 through page 136, line 3, strike page 135, line 3 through page 136, line 3 and substitute the following therefor:

(G) If ASHRAE/IES Standard 90.1 as in effect on the date of enactment of the National Energy Security Act of 1992 is subsequently amended with respect to any type or class of small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioner, packaged terminal heat pump, warm-air furnace, packaged boiler, storage water heater, instantaneous water heater, or unfired hot water storage tank, then the Secretary shall establish an amended uniform national standard for that product type or class at the minimum level for each effective date specified in the amended ASHRAE/IES Standard 90.1 unless he determines by rule published in the Federal Register, supported by clear and convincing evidence, that adoption of a standard more stringent than the amended ASHRAE/IES Standard 90.1 for such product type of class would result in significant additional conservation of energy and is technologically feasible and economically justified. If the Secretary issues a rule containing such a determination, the rule shall establish an amended uniform national standard for such product type or class if establishment of such standard will result in significant additional conservation of energy and if the establishment of such standard is technologically feasible and economically justified. In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—

(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II) the savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price of, or in the initial changes for, or maintenance expenses of, the products which are likely to result from the imposition of the standard;

(III) the total projected amount of energy savings likely to result directly from the imposition of the standard;

(IV) any lessening of the utility or the performance of the products likely to result from the imposition of the standard;

(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) the need for national energy conservation; and

(VII) other factors the Secretary considers relevant.

The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product. The Secretary may not prescribe an amended standard under this subparagraph (d)(3)(G) if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. The failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types (or classes). A standard as amended by the Secretary under this subsection shall become effective for products manufactured on or after a date which is

(1) two years after the effective date of the relevant standard in amended ASHRAE/IES Standard 90.1 for small commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, and

(2) three years after the effective date of the relevant standard in amended ASHRAE/IES Standard 90.1 for large commercial package air conditioning and heating equipment.

except that an amended standard issued by the Secretary pursuant to a rule under this subparagraph (d)(3)(G) shall become effective for products manufactured on or after a date which is four years after the date the rule is published in the Federal Register.

(H) The criteria specified in subparagraph (d)(3)(G) shall apply only to products listed in subparagraph (d)(3)(G).

Page 136, line 14, insert "(a)" after "(4)", and change "These standards" to "Standards prescribed or established under this subsection (d)".

Page 136, line 6, after the end of the line, add the following three subparagraphs:

(b) Notwithstanding subparagraphs (a), a standard prescribed or established under this subsection (d) shall not preempt a standard for such a product in a building code for new construction if the standard in the building code does not require that the energy efficiency of such product exceed the applicable minimum energy efficiency requirement in amended ASHRAE/IES Standard 90.1, *Provided*, That such standard in the building code does not take effect prior to the effective date of amended ASHRAE/IES Standard 90.1.

(c) Notwithstanding subparagraph (a), a standard prescribed or established under this subsection (d) shall not preempt the standards of the State of California for water-source heat pumps below 135,000 Btu per hour (cooling capacity) that become effective on January 1, 1993, which standards are set forth in Table C-6 of the California Code of Regulations, Title 24, Part 2, Chapter 2-53.

(d) Notwithstanding subparagraph (a), a standard prescribed or established under this subsection (d) shall not preempt a state regulation which has been granted a waiver by the Secretary. The Secretary may grant a waiver pursuant to the terms, conditions, criteria, procedures and other requirements specified in Section 327(d) of this Act.

Page 136, line 8, change "(D)" to "(G)".

Page 137, line 10, after line 10 add a new paragraph (3) as follows:

(3) In the case of products for which the Commission prescribes a labeling rule under paragraph (1) manufacturers and importers of such equipment shall establish efficiency ratings for each type of equipment in accordance with the applicable test procedures, and

(a) include the efficiency rating of the equipment on or near the permanent nameplate attached to each piece of equipment; and

(b) prominently display the efficiency rating of the equipment in new equipment catalogs used by the manufacturer or importer to advertise the equipment.

(c) such other markings as the Secretary may determine are needed solely to facilitate enforcement of the efficiency standards established under this Act.

In developing these labeling requirements for electric motors, the Commission shall take into consideration NEMA Standards Publication MG1-1987.

(4) Effective 360 days after a test procedure rule applicable to any product is established under this subsection, no manufacturer, distributor, retailer, or private labeler may make any representation—

(1) in writing (including any representation on a label), or

(2) in any broadcast advertisement.

respecting the energy consumption of such equipment or cost of energy consumed by such equipment, unless such equipment has been tested in accordance with such test procedure and such representation fairly disclosed the results of such testing."

Page 138, line 4, after line 4, redesignate subsections (h) and (i) as subsections (i) and (j), respectively, and add a new subsection (h) as follows:

(h)(1) Effective on the effective date of this Act, this section preempts any State regulation insofar as such State regulation provides at any time for the disclosure of information with respect to any measure of energy consumption of any covered product if—

(A) such State regulation requires testing or the use of any measure of energy consumption or energy descriptor in any manner other than that provided under this section; or

(B) such State regulation requires disclosure of information with respect to the energy use or energy efficiency of any product subject to this section other than information required under this section.

(2) For purposes of this section, the term 'State regulation' means a law, regulation, or other requirement of a State or its political subdivisions.

Page 140, line 6, after line 6, add a new subsection (b) as follows:

(b) Section 340(2)(B) of the Energy Policy and Conservation Act (42 U.S.C. 6311) is amended by striking "(v) air conditioning equipment;" and "(xi) furnaces;" and by redesignating items (vi), (vii), (viii), (ix), (x), (xii), (xiii), and (xiv) therein as items (v), (vi), (vii), (viii), (ix), (x), (xi), and (xii), respectively.

DECONCINI AMENDMENT NO. 1603

Mr. JOHNSTON (for Mr. DECONCINI) proposed an amendment to the bill S. 2166, supra, as follows:

On page 72, line 2, add the following new subparagraphs:

"(iv) expand training and information dissemination programs in cooperation and participation with industry using existing technology transfer programs for such sums that may be necessary in fiscal year 1993, 1994, 1995, and

(v) assist existing renewable energy industry consortia and State energy offices to work cooperatively with existing technology transfer programs.

BURNS AMENDMENT NO. 1604

Mr. JOHNSTON (for Mr. BURNS) proposed an amendment to the bill S. 2166, supra, as follows:

On page 108, line 20, delete the words "code, and" and insert the following: "codes and standards,".

On page 108, line 23, delete "code." and insert the following: "codes and standards, and methods which will enhance and facilitate the use of renewable technologies.".

Page 114, line 20, following "that", insert the following: "both active and passive".

Page 114, line 22, after the semicolon, add the following new paragraph and renumber accordingly:

"(3) that such rating shall take into account the benefits of peak load shifting construction practices;".

Page 125, line 6, following "programs", insert the following: ", including the effects of building construction practices designed to obtain peak load shifting,".

ROBB AMENDMENT NO. 1605

Mr. JOHNSTON (for Mr. ROBB) proposed an amendment to the bill S. 2166, supra, as follows:

At the appropriate place insert:

SEC. . NATIONAL SECURITY TAX SHIFT.

(a) FINDINGS.—The Senate finds that—

(1) Conservation must be at the heart of any effective long-term national energy strategy; and increasing the motor fuels tax would encourage Americans to purchase more fuel efficient vehicles, car pool, and use alternative forms of transportation.

(2) By encouraging conservation and the market for alternative fuels, increasing the motor fuels tax would reduce our reliance on imported oil, and would reduce the likelihood that American troops will need to be sent abroad to secure the free flow of oil.

(3) Increasing the motor fuels tax would reduce automobile pollution, and, in particular, would reduce the emission of carbon dioxide, a key "greenhouse" gas.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that as part of the Nation's Energy Strategy, the Senate Finance and House Ways and Means Committees should study the possibility of legislation to shift some amount of taxation from the income tax to the motor fuels tax to encourage conservation and alternative fuels, provided that: (1) the revenue generated by the increase in motor fuels tax is shifted to taxpayers in the form of income tax reductions so that the package is revenue-neutral, does not represent a net tax increase on the average American family, and is at least as progressive as the current Tax Code; (2) the tax shift does not become effective until the current recession is over; and (3) the tax shift is phased in gradually to allow consumers and industries to adjust.

WELLSTONE AMENDMENT NO. 1606

Mr. JOHNSTON (for Mr. WELLSTONE) proposed an amendment to the bill S. 2166, supra, as follows:

On page 157, line 25, insert "cogeneration and district heating and cooling applications," after "efficiency,".

EXON AMENDMENT NO. 1607

Mr. JOHNSTON (for Mr. EXON) proposed an amendment to the bill S. 2166, supra, as follows:

At the appropriate place in the bill insert the following:

SEC. . STRATEGIC DIVERSIFICATION.

The Office of Barter within the U.S. Department of Commerce and the Interagency Group on Countertrade shall within six months from the date of enactment report to the President and the Congress on the feasibility of using barter, countertrade and other self-liquidating finance methods to facilitate the strategic diversification of United States oil imports through cooperation with the former Soviet Union in the development of their energy resources. The report shall consider among other relevant topics the feasibility of trading American grown food for Soviet produced oil, minerals or energy.

JOHNSTON (AND OTHERS) AMENDMENT NO. 1608

Mr. JOHNSTON (for himself, Mr. WALLOP, Mr. WELLSTONE, Mr. ADAMS, Mr. LUGAR, Mr. LEAHY, and Mr. BRADLEY) proposed an amendment to the bill S. 2166, supra, as follows:

Beginning on page 93, line 20, delete section 5301 in its entirety and substitute the following:

"SEC. 5301. STREAMLINING REGULATION UNDER THE FEDERAL POWER ACT.—The Federal Power Act, as amended, (16 U.S.C. 791a et seq.) is further amended by inserting in section 4 ", and for the purposes of subsections (h) and (i), the Commission shall" after "empowered" and inserting the following after subsection (g):

"(h) Establish procedures that, to the extent practicable, provide for the earliest identification and performance of all studies and analyses required to be performed in conjunction with an application for a license under this part.

"(i) Within one year after enactment of this subsection, enter into memoranda of understanding with each Secretary under whose supervision a reservation falls which provides for:

"(1) timely submission by the Secretary to the Commission of any proposed terms and conditions which are relevant to the Secretary's statutory responsibilities for the reservation with respect to the proposed project;

"(2) establishment and implementation of a process for resolution of disputes, if any, between the Commission and the Secretary concerning conditions proposed by the Secretary in connection with the licensing of a project; and,

"(3) identification and implementation of measures to avoid duplication of effort, delay, and costs to all parties in connection with the licensing of a project.".

Beginning on page 98, line 9, delete section 5302 in its entirety and substitute the following:

"SEC. 5302. (a) MEMORANDA OF UNDERSTANDING.—The Commission and all relevant federal agencies are directed to enter into memoranda of understanding which will establish procedures for a consolidated review to the fullest extent possible under the National Environmental Policy Act of 1969 of federal actions affecting the authorization of hydroelectric projects subject to the jurisdiction of the Commission.

"(b) THIRD PARTY CONTRACTING.—

"(1) Where environmental documents are prepared in connection with an application for a license under Part 1 of the Federal Power Act, the Commission may permit, at the election of the applicant, a contractor, consultant or other person funded by the applicant and chosen by the Commission from among a list of such individuals or companies determined by the Commission to be qualified to do such work, to prepare such environmental document. The contractor shall execute a disclosure statement prepared by the Commission specifying that it has no financial or other interest in the outcome of the project. The Commission shall establish the scope of work and procedures to assure that the contractor, consultant or other person has no financial or other potential conflict of interest in the outcome of the proceeding. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.

"(2) Where an environmental assessment is prepared in connection with an application for a license under Part 1 of the Federal Power Act, the Commission may permit an applicant, or a contractor, consultant or other person selected by the applicant, to prepare such environmental assessment. The contractor shall execute a disclosure statement prepared by the Commission specifing that it has no financial or other interest in the outcome of the project. The Commission shall institute procedures, including pre-application consultations, to advise potential applicants of studies or other information forseeably required by the Commission. The Commission may allow the filing of such applicant-prepared environmental assessments as part of the application. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.".

On page 282, line 1, delete the words "MAJOR FED-" and lines 2 through 19 and insert in lieu thereof:

"MEMORANDA OF UNDERSTANDING.—The Commission and all relevant federal agencies are directed to enter into memoranda of understanding which will establish procedures for a consolidated review to the fullest extent possible under the National Environmental Policy Act of 1969 of federal actions affecting the authorization of natural gas facilities subject to the jurisdiction of the Commission.".

On page 282, line 20, delete "(B)" and insert in lieu thereof "(b) ENVIRONMENTAL IMPACT STATEMENTS.—".

On page 282, line 22, delete "this" and insert in lieu thereof "the Natural Gas.".

On page 282, line 23, strike "shall" and insert "may".

On page 282, line 24, insert "and chosen by the Commission from among a list of such individuals or companies determined by the Commission to be qualified to do such work", after "applicant".

On page 282, line 25, after "document." insert "The contractor shall execute a disclosure statement prepared by the Commission specifying that it has no financial or other interest in the outcome of the project.", and delete "The Commission shall" and all that follows through "work." on page 283, line 4.

On page 283, line 11, delete "(C)" and insert in lieu thereof "(c) ENVIRONMENTAL ASSESSMENTS.—

On page 283, line 14, strike "shall" and insert "may".

On page 283, line 16, after "assessment." insert "The contractor shall execute a disclosure statement prepared by the Commission specifying that it has no financial or other interest in the outcome of the project.".

On page 283, line 20, strike "shall" and insert "may".

On page 283, delete lines 24 and 25 and, on page 284, delete lines 1 and 2, and insert in lieu thereof:

"(d) Any environmental review undertaken by the Commission pursuant to the National Environmental Policy Act of 1969 or by a project sponsor must include those facilities subject to the Natural Gas Act and Natural Gas Policy Act of 1978, but will not include any related nonjurisdictional facilities unless the Commission's control and responsibility over those facilities is sufficient to cause the private action to become a Federal action. To determine whether sufficient control and responsibility by the Commission exists, the following factors must be considered:

"(1) whether the regulated activity comprises merely a link in a corridor-type project;

"(2) the extent of the nonjurisdictional facilities in the immediate vicinity of the regulated activity;

"(3) the extent to which the entire project will be within the jurisdiction of the Commission; and

"(4) the extent of cumulative Federal control and responsibility.

(e) As a part of a required NEPA review of proposed facilities, at the beginning, FERC shall meet with the applicant, other affected Federal, State and local agencies, affected Indian Tribes if any, and other interested persons to identify issues to be analyzed and when serving as the lead Agency, FERC may allocate assignments, and establish time frames necessary for the preparation of an Environmental Impact Statement (EIS).".

MURKOWSKI AMENDMENT NO. 1609

Mr. JOHNSTON (for Mr. MURKOWSKI) proposed an amendment to the bill S. 2166, supra, as follows:

SEC. 5306.

On page 105, at the end of line 20 strike "." and insert "; and (3) a project located near Nondalton, Alaska, with application numbered EL88-25-001."

NOTICE OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. FORD. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Wednesday, February 26, 1992, in SR-301. The committee will hold a hearing at 9:30 a.m. on three measures dealing with the Smithsonian Institution: S. 1598, to authorize the Board of Regents of the Smithsonian Institution to acquire land for watershed protection at the Smithsonian Research Center, and for other purposes; S. 1682, to authorize the Board of Regents of the Smithsonian Institution to acquire an Administrative Service Center and for other purposes; and Senate Joint Resolution 221, providing for the appointment of Hanna Holborn Gray as a citizen regent of the Smithsonian Institution.

The committee will hold a business meeting to mark up pending administrative items at 10:30 a.m.

For further information regarding the hearing and administrative markup on February 26, please contact Carole Blessington of the Rules Committee staff on 224-0278.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. MITCHELL. 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, February 6, 1992, at 11:30 a.m.

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

AGENDA

I. NOMINATIONS

U.S. District Judges

Ronald M. Whyte, to be United States District Judge for the Northern District of California.

Jon P. McCalla, to be United States District Judge for the Western District of Tennessee.

Julie E. Carnes, to be United States District Judge for the Northern District of Georgia.

Nancy G. Edmunds, to be United States District Judge for the Eastern District of Michigan.

David W. McKeague, to be United States District Judge for the Western District of Michigan.

Phillip G. Reinhard, to be United States District Judge for the Northern District of Illinois.

Sandra G. Beckwith, to be United States District Judge for the Southern District of Ohio.

Steven D. Merryday, to be United States District Judge for the Middle District of Florida.

Frederick J. Scullin, Jr., to be United States District Judge for the Northern District of New York.

K. Michael Moore, to be United States District Judge for the Southern District of Florida.

II. BILLS

S. 826—A bill to establish a specialized corps of judges necessary for certain Federal proceedings required to be conducted, and for other purpose—Heflin

S. 758—A bill to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of patents and plant variety protections, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private entity—DeConcini

S. 759—A bill to amend certain trademark laws to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of trademarks, and that all the remedies can be obtained in such suit against a private entity—DeConcini

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—McConnell

S. 580—A bill to amend title 11 of the United States Code to exclude from the estate of the debtor certain interests in liquid and gaseous hydrocarbons—Bentsen

S. 1941—A bill to amend the Immigration and Nationality Act for the purpose of reforming procedures for the resettlement of refugees of the United States—Kennedy

S.J. Res. 35—A joint resolution proposing an amendment to the Constitution of the United States relative to contributions and expenditures intended to affect Congressional and Presidential elections—Hollings

S. 1985—A bill to establish a commission to review the Bankruptcy Code, to amend the Bankruptcy Code in certain aspects of its application to cases involving commerce and credit and individuals debtors and add a temporary chapter to govern reorganization of small businesses, and for other purposes—Heflin

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be authorized to meet on Thursday, February 6, at 10:30 a.m., for a hearing on the subject: getting the most out of every tax dollar: Government management and budget 1992.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., February 6, 1992, to receive testimony on the Hawaiian Homes Commission Act.

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

COMMITTEE ON FINANCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committe on Finance be authorized to meet during the session of the Senate on February 6, 1992, at 10 a.m. to hear and to consider the nomination of Kevin T. Moley to be Deputy Secretary of Health and Human Services.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MITCHELL. 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 February 6, 1992, at 10 a.m. on the nomination of Barbara Hackman Franklin to be Secretary of Commerce.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 6, 1992, at 2:30 p.m. to hold a hearing on the situation in four former Soviet republics possessing nuclear weapons.

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

COMMITTEE ON ARMED SERVICES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, February 6, 1992, at 9:30 a.m., in open session to receive testimony on military conversion in the Russian Federation.

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

SUBCOMMITTEE ON CONSUMER AND REGULATORY AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Consumer and Regulatory Affairs of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate, Thursday, February 6, 1992, at 10 a.m. to conduct a hearing on the Federal Government's efforts to pursue financial institution fraud.

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

SUBCOMMITTEE ON TAXATION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Taxation of the Committee on Finance be authorized to meet during the session of the Senate on February 6, 1992, at 2 p.m. to hold a hearing on competitiveness and long-term tax policy.

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

SELECT COMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs of the Foreign Relations Committee be authorized to meet during the session of the Senate on Thursday, February 6, at 10 a.m. to hold a hearing on United States policy toward North Korea.

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

ADDITIONAL STATEMENTS

DESALINATION

• Mr. SIMON. Mr. President, early in the first session of the 102d Congress, I introduced a bill to rededicate the U.S. Government to funding the research and development of low-cost desalination technologies. This bill is currently in the Environment and Public Works Committee where I anticipate it will be marked up shortly.

When I first began working on the issue of desalination several years ago, there was limited interest. Recently, however, water shortages in our country and abroad have resulted in an increased focus on the ability of affordable desalination technology to help address these problems and reduce the possibility of conflict.

An article recently appeared in the Chicago Tribune that underscores this point. Entitled "Water May Be Next

Flashpoint in Mideast," the article details the growing regional tensions in the Middle East over scarce water supplies. It also mentions that desalination may be the best option available politically to reduce tensions. I urge my colleagues to read this article and to support S. 481, the Water Research Act of 1991, when it comes to the Senate floor. At this point, I ask that the article be entered into the RECORD.

The article follows:

[From the Chicago Tribune, Feb. 2, 1992]

WATER MAY BE NEXT FLASHPOINT IN MIDEAST

(By Tom Hundley)

AL-AWJA, Israel-occupied West Bank—The mountain spring that once nourished the banana and orange groves of this Arab village in the Jordan River Valley flows no more.

The life-giving stream began to falter five years ago, swindling to a trickle during the dry months of the summer, returning to normal when the winter rains came.

But early last summer, it went completely dry and experts doubt that even this winter's record rainfalls will be able to regenerate it.

As a result, the fruit trees have withered and died, and the livelihood of dozens of farmers has been ruined.

Many farmers have been forced to take the jobs they most resent—construction work on new Jewish settlements.

"The people blame the Israelis for this disaster," said Ibrahim Naji, a 30-year-old former farmer.

It is not hard to understand why. The shallow aquifer that had been the source of the Al-Awja spring has been drained dry by a half-dozen deep wells dug by Israeli water authorities. The wells' pumps churn day and night, drawing water for dozens of new settlements that have sprouted like desert flowers over the last few years and lowering the water table in the arid hills of the West Bank.

The struggle over scarce water resources is hardly unique to the Israeli-Palestinian conflict. Indeed, it is the recurring theme of several intra-regional conflicts that have helped make the Middle East a political minefield.

During the Persian Gulf crisis, Egypt's leaders became apoplectic when neighboring Sudan—at Iraq's behest—reportedly aimed its missiles at the Aswan Dam, which regulates the flow of the Nile, Egypt's sole source of water.

A year earlier, Syria and Iraq were muttering darkly against Turkey and its ambitious plans to construct a series of dams that would greatly reduce their share of the flow from the Tigris and Euphrates rivers.

The Turkish military now guards those dams like the gold in Ft. Knox.

In Jordan, King Hussein has said he can envision only one circumstance that would compel him to go to war with Israel—a dispute over the headwaters of the Jordan.

Egypt's late Anwar Sadat once said his country would not hesitate to go to war to defend the Nile. His threat was aimed not at Israel, with whom he made peace in 1979, but at Egypt's upstream neighbors, Ethiopia and Sudan.

The consensus among diplomats in the region is that water is the next crisis waiting to happen. The problem is simple enough: The arid Middle East does not have enough water to sustain the current rates of population growth and economic development.

Pollution, waste and mismanagement threaten the limited supplies that are available.

That's one reason why water was at the top of the list of topics discussed in Moscow at last week's multilateral Middle East talks.

"Water has become a strategic asset as well as an economic commodity," said Kamran Inan, the state minister in charge of Turkey's ambitious plans to harness the Tigris and Euphrates. "In 10 years, water will be more important than oil—if not more expensive."

Water already has assumed paramount importance in the bitter political struggle between Israel and the Arabs. With the exception of Lebanon, none of the principals—Israel, Jordan, Syria or the Palestinians in the occupied territories—has enough water to meet current needs.

Israel, however, holds the upper hand. Territory seized from Jordan and Syria in the 1967 war and from Lebanon in the 1982 invasion has given Israel full control of the region's main water resources—the Jordan and Litani Rivers and the aquifers that lie beneath the West Bank.

According to one U.S. study, nearly half of Israel's water now comes from sources located outside its pre-1967 boundaries. This includes water that is drawn from the vital Yarkon-Taninim aquifer, which is replenished mainly by rains that fall on the slopes of the West Bank.

Nor surprisingly, Israel's agriculture minister recently took out full-page newspaper ads warning that Israel's water needs precluded the possibility of relinquishing a single inch of territory taken from the Arabs.

He was not exaggerating. For years, Israel has been using up its water resources at 5 to 10 percent above the natural replenishment rate, a reckless practice that is lowering the water table and exposing the fragile underground aquifers to sea water.

Israeli per capita consumption is more than 300 cubic meters of water a year, low by standards of industrialized nations but triple the 100 cubic meter per capita consumption of West Bank Palestinians.

The reason for the discrepancy is simple. "Israel has full control over the water resources; even on our own land, we can do nothing without their permission," said Nader Khatib, a water engineer for the West Bank town of Bethlehem.

Palestinians in the occupied territories traditionally have drawn water from numerous shallow wells that skim the upper reaches of the underground aquifers. But Israeli authorities have sealed up some of these wells and imposed a strict ban on new Arab wells.

Meanwhile, Jewish settlers have been provided with deep wells—such as those near the spring at Al-Awja—that give the false impression of an unlimited supply of water.

During this summer's drought, when many Arab villages had no water at all, residents of neighboring Jewish settlements were watering their lawns. The Israeli water authority gives residential customers a discount for watering shrubs and flowerbeds.

Palestinians complain that Israeli policies amount to outright theft of their resources. Some see it as part of a grand plot to destroy their agrarian society and force them into the low end of the Israeli economy.

Israelis counter that they have upgraded the overall water system in the occupied territories and that Palestinian per capita consumption has actually increased under Israeli rule.

While these issues provide tinder for the ongoing Arab-Israeli conflict, many in Israel are beginning to rethink the country's attitudes toward water usage.

Israel currently allocates about 70 percent of its total water resources to its heavily subsidized agricultural sector—part of the Zionist dream to "make the desert bloom." At the same time, Israel, with a population of 4.3 million, hopes to absorb up to 1 million immigrants from the former Soviet Union over the next five years. Simple arithmetic says it cannot do both.

Many authorities think it would be cheaper for Israel to import food rather than continue expensive agriculture subsidies.

"But agriculture is not just an economic issue—just ask the American farmer," said Hillel Shuval, a water expert at Jerusalem's Hebrew University.

"Agriculture is a very deep ideological issue in Zionism. It's a bond to the land, and anything that results in its weakening is not just a cost-benefit analysis for us," said Shuval.

Egypt is faced with a similar dilemma, but on a vastly larger scale; Egypt's population is 55 million, and it increased by 1 million every 10 months.

The agricultural sector uses up 82 percent of Egypt's water resources and employs 60 percent of its population, yet manages to meet only about half of the nation's food requirements.

"If we don't do something between now and 2005, we'll be in real trouble," said Mahmoud Abu Zaid, director of Egypt's water research authority.

For Egypt, water policy is a juggling act that must measure the thirst of unrestricted population growth against ambitious plans to reclaim desert land for agricultural uses.

Like Israel, Egypt is up against the limits of its water resources. It already uses all 55.5 billion cubic meters of its annual share of the Nile—and them some. The extra water—about 5.7 billion cubic meters—is water that is recycled two or three times before it drains into the Mediterranean.

Since 1968, when the Aswan High Dam was completed, Egypt has reclaimed more than 1 million acres of land for farming and has plans to reclaim a 1.6 million more by 2000—barely enough to keep pace with the expanding population.

The new lands are irrigated by water-saving drip and sprinkle technologies, but the vast majority of farmland in the Nile Valley and Delta is irrigated by inefficient canals that have been around since Pharaonic times.

"We do know quite a lot about water and conservation, but unfortunately we don't have enough money to put it into effect," said Magdy Sobhi Yosef, a water expert at Cairo's Center for Political and Strategic Studies.

What most worries Egypt, however, is that 100 percent of the Nile's flow originates outside its borders.

About half the Nile's waters originate in the highlands of Ethiopia; the rest comes from the equatorial rainforests of central Africa, and all of it must flow through the Sudan before reaching Egypt.

None of these places is noted for political tranquility. And while none has the technical wherewithal to completely cut off the Nile, several countries including Ethiopia and Sudan are starting to come up with strategies to exploit the Nile for their own economic development. Inevitably, this will eat into Egypt's share of the river.

Little wonder, then, that former Egyptian Foreign Minister Boutros Boutros-Ghali, now the new UN secretary general, framed Egypt's national security as "a question of water."

Nor is Egypt the only Arab state that is vulnerable.

"Ninety percent of the Arabic speaking people receive their water from non-Arabic regions," notes Kamran Inan, Turkey's water czar.

Turkey, one of the few Middle Eastern countries with an abundance of water, hopes to do with water what Saudi Arabia has done with oil and position itself as the region's water superpower.

The centerpiece of Turkey's strategy is the $22 billion Southeast Anatolia Project, which calls for the construction of 22 dams along the upper Euphrates and Tigris rivers.

The completed project is expected to generate 27 billion kilowatts of electricity annually, irrigate 42 million acres of farmland and provide more than 3 million jobs in what is now Turkey's most impoverished and backward region.

But already the ambitious scheme has Turkey's Arab neighbors in a state of high anxiety.

In early 1990, when the first phase of the massive Ataturk Dam was finished, Turkey shut off the Euphrates for a month to begin filling the reservoir. Downstream, Syria and Iraq protested vehemently.

At this point, the Ataturk Dam has cut the flow from the Euphrates by about a third, and neither Syria nor Iraq are soothed by Kamran Inan's assurances that "we never plan to use water as a weapon, as the Arabs have done with oil."

Indeed, Turkey is aggressively promoting its idea for a "peace pipeline"—another $20 billion scheme that would carry Turkey's water surplus to parched customers in Saudi Arabia and Kuwait, and perhaps Syria, Jordan and Israel.

But already Syria has threatened to block the pipeline, denouncing it as a Turkish plot to "steal" water from poor Arab countries—namely Syria—and sell to rich Arab countries.

More to the point are doubts about the economic feasibility of such a project.

Turkish officials claim that a pipeline could carry 6 million cubic meters a day at a cost of $.50 per meter compared to the $1.50 a meter it now costs countries like Saudi Arabia to desalinate seawater. But other experts say the costs would be about the same.

"Desalination is probably the best option politically, despite the cost, since third country cooperation would not be required," said Hebrew University's Shuval.

Either option is more feasible than some of the other far-out schemes that have been advanced—Saudi Arabia's plan to tow icebergs from the Arctic; Israel's idea to float huge plastic waterbags across the Mediterranean.

But clearly, the key to resolving the Middle East's chronic water problems lies in solid regional cooperation rather than the current political deadlock that Shuval accurately characterizes as "a zero sum game in which nobody starts out with enough."

At last week's multilateral talks in Moscow, delegates representing nearly 40 nations agreed to form a permanent working committee of experts to take up the regional water crisis. Headed by the U.S., the committee voted to meet again in spring to set up a formal agenda.

But a few key players are not cooperating. Syria, which last autumn forced the cancellation of a major international water conference in Istanbul, boycotted Moscow. The Palestinians came to Moscow, but declined to take part in the talks after the conference cosponsors refused to accredit some of the Palestinian delegates.

Still, Israel participated in the talks, as did Saudi Arabia, Jordan and a half-dozen other Arab states who previously had refused any nod to the existence of their Jewish neighbor.

Nobody expected immediate breakthroughs in Moscow—and none occurred. But the fact that longtime antagonists finally are sitting down to discuss regional issues is a significant achievement in itself.•

TRIBUTE TO CALIFORNIA, MO, HEROES

• Mr. BOND. Mr. President, I rise today to pay tribute to some of Missouri's heroes whose lives were taken during a sudden tragedy in the small town of California, MO.

December 9, 1991, was a day of darkness for mid-Missouri. A gunman shot Moniteau County deputy sheriff, Leslie Roark. The gunman then left the scene and drove to the home of the Moniteau County sheriff and shot and killed the sheriff's wife, Pam Jones. Later, as a search squad was being formed, the gunman shot and killed Cooper County sheriff, Charles Smith, and Miller County deputy sheriff, Sandra Wilson, as they responded to a call for help with the search. The gunman also shot and wounded Russell Borts, a Moniteau County deputy sheriff.

Moniteau County deputy, Leslie Roark, was responding to a call of a family disturbance. Pam Jones was shot in her home as she participated in a church group gathering. She was an unsuspecting target, possibly chosen by the enraged gunman as a surrogate for her husband, the Moniteau County sheriff. Sheriff Smith and Deputy Wilson unhesitatingly responded to the call for assistance from their fellow officers, and gave the ultimate sacrifice. These officers and Mrs. Jones are heroes. Missouri mourns their loss, but praises their contributions.

My deepest sympathy goes to the law enforcement officials, citizens, State and Federal agencies, family, and friends who were involved in the events which unfolded that day. The Moniteau, Cooper, and Miller County Sheriff Departments, who sustained the loss of their comrades-at-arms—a loss comparable to losing a member of one's family, I commend for continuing to carry out their vital jobs while mourning the loss of their fellow officers.

I also pay tribute to the sheriff departments of Morgan, Johnson, Cole, Pettis, Platte, Henry, and Boone Counties; to the city police departments of California, Bonneville, Springfield, Columbia, Jefferson City, Tipton, Versailles, Eldon, and Lake Ozark; to the Missouri Department of Conservation, the Missouri State Water Patrol, and Missouri State Highway Patrol officers, and to the Federal officials of the FBI, Bureau of Alcohol, Tobacco, and Firearms, and U.S. marshall's office; for their able assistance in this matter.

From all of these search team members to the California resident, Mrs. Dorothy Miller, in whose home the gunman chose to hide, all involved gave unselfishly of themselves. Missouri is indeed proud to be home to such brave individuals.•

A MESSAGE TO COLOMBIA ON INDIGENOUS RIGHTS

• Mr. CRANSTON. Mr. President, last week I took to the floor to express my preoccupation over the human rights situation in Colombia. I am happy to report this concern is shared by many of our colleagues here in the Senate. I ask that a copy of a letter we have sent to President Gaviria about our views be reprinted in the RECORD.

The letter follows:

U.S. SENATE,
Washington, DC, February 6, 1992.

His Excellency DR. CESAR GAVIRIA TRUJILLO,
President of the Republic of Colombia, Presidential Residence, Bogota, Colombia

DEAR PRESIDENT GAVIRIA: As members of the U.S. Congress we commend you on the achievements of your administration during 1991. We congratulate you for your role in the new constitution and its political and judicial reforms, for the first governmental report on human rights violations by state agents, and for the steps you have taken toward curbing violence and establishing civilian control of the military. We look forward to continue cooperation between our two countries.

We would like to take this opportunity to express our deep concern about the recent massacre of indigenous campesinos on the "El Nilo" ranch in Calota (Cauca Department), and about ongoing violations of international humanitarian law in Colombia.

We share your condemnation of the brutal massacre and mutilation of 11 men, 5 women, and 4 children of the Paez indigenous community during a meeting to plan the next day's work on the evening of December 16, 1991, in "El Nilo." We understand that the case is complex, given the land dispute between the indigenous community and the alleged new purchasers of the land, and given the possible involvement of drug cartels in that purchase. We are heartened that you have pledged to punish those responsible for this crime, and we strongly support a full investigation of the case and the bringing to justice of those responsible.

We are especially concerned about reports we have received about events subsequent to, yet apparently related to, the massacre:

The Regional Council of Indigenous of the Cauca (CRIC) reports that Edgar Torres, a teacher, and Rodolfo Alvarez, a lawyer, both collaborating with the authorities in investigating the case and both local activists with the Alianza Democratic/M-19, were killed within an hour on January 8, 1992. In addition, CRIC reports that Mr. Etnio Vidarte, also assisting authorities in the case, "disappeared" that same week.

Several members of the CRIC have received death threats since the massacre. These include Jesus Enrique Pinacue, Jesus Rey Avirama, Marco Anibal Avirama, Cristobal Secue (President of the CRIC), Edgar Avirama, Anatolio Quira (Recently-elected indigenous Senator), and Oscar Elias Lopez, (Legal Counsel, CRIC).

In addition, Aldemar Pinzon, the representative of the indigenous territories

Huellas, Corinto, and Miranda, and Apolinar Garcia, the new Governor of the territories, have been informed that a 12,000,000-peso (US$16,400) bounty has been placed on their heads.

According to the CRIC, numerous witnesses report that well-armed civilian groups continue to roam freely on the ranch "El Nilo," where the massacres occurred, and on other ranches rumored to have been acquired by drug trafficking organizations. These groups have reportedly announced their willingness to commit another massacre.

Our current understanding is that state forces have not been implicated in these incidents. We understand that the apparent involvement of drug trafficking organizations in the land tenure problems of the Cauca region fuels violence in sinister ways.

However, we believe that certain measures taken by your government could have a profound positive effect on this case and on the concerns of the indigenous peoples of the area.

We urge you to continue to press forward diligently in the investigation of the El Nilo massacre, and to investigate fully the murders of Mr. Torres and Dr. Alvarez, and the disappearance of Mr. Vidarte. We urge you to take strong action against all armed paramilitary groups and other forms of private justice, and against infringements of the rights of indigenous communities, including those rights granted them under the new constitution. Finally, we ask that you take all necessary measures to ensure the personal security of indigenous leaders and of all those persons connected with the investigation of the El Nilo massacre.

We would like to express our further concern about the general level of violations of international humanitarian law in Colombia. Respected national and international human rights organizations, as well as agencies of your administration, have documented both the deplorable abuses of the guerilla forces of the Simon Bolivar National Guerilla Coordinating Board and the abuses of government forces. The figures cited in the Attorney-General's report of complaints of government abuses are truly alarming—560 persons murdered, 68 massacres, 664 victims of torture, 616 persons "disappeared: by state agents between January 1990 and April 1991.

We stand by the positive steps you have taken to document and to curb these abuses, and to punish those responsible. We also recognize the efforts you have made to seek a political solution to the insurgency and your open commitment to carry out law enforcement activities in a manner that respects human rights. We urge you to take the strongest possible actions to ensure that sanctions against human rights violators are implemented and that such violators are prosecuted to the fullest extent of civil and military law.

Finally, we express our deep concern over the killing on January 29 of Ms. Blanca Valero de Duran, secretary of the Regional Committee for the Defense of Human Rights (CREDHOS) in Barrancabermeja. We strongly condemn this killing of a human rights monitor and urge you to prosecute its perpetrators to the full extent of the law. We also ask that you take all possible measures to protect the lives of the staff members of CREDHOS.

We write in a spirit of shared commitment to human rights, including the rights of cultural survival. We support any efforts that you take to affirm this shared commitment.

Sincerely,

Alan Cranston, Patrick J. Leahy, John D. Rockefeller, Herb Kohl, Paul Simon, Edward M. Kennedy, David L. Boren, Barbara A. Mikulski, Brock Adams, Paul Wellstone.•

HEALTH CARE KEYBOARD

• Mr. KASTEN. Mr. President, I rise today to honor a small Wisconsin business, Health Care Keyboard, which has created an innovative product that will take technology for the disabled into the 21st century.

Jeffrey and William Szmanda, two brothers from Menomonee Falls, WI, were invited to participate in the Johns Hopkins National Search for Computing Applications to Assist Persons with Disabilities. This competition, which sought to identify innovative computer products and applications that help people with disabilities, attracted over 750 applicants nationally.

The Szmanda brothers became second-place winners in the Midwest regional competition and went on to become 1 of only 30 finalists in national competition.

The Health Care Keyboard, invented by Jeffrey and William Szmanda, is divided into three sections that can be independently separated, raised, lowered, rotated, and tilted into an infinite number of positions. This improves access and use by people disabled with cerebral palsy, multiple sclerosis, muscular dystrophy, spinal cord injuries, arthritis, and orthopedic conditions such as carpal tunnel syndrome.

The adjustability of the keyboard can help employers comply with the new requirements of the Americans with Disabilities Act of 1990.

The product provided by this small business will effectively ease the working conditions for millions of Americans across the country. Jeffrey and William Szmanda are to be praised for their visionary efforts to address the needs of the disabled and American business.•

JUDGE JOSEPH C. HOWARD

• Ms. MIKULSKI. Mr. President, I rise today to recognize an outstanding judge in my own hometown of Baltimore, MD: Judge Joseph C. Howard of the U.S. District Court for the District of Maryland. Judge Howard has been a major force in the Maryland judiciary for over 25 years. He is renowned for his sense of fairness and for his unwavering demand for equal treatment of all people in the judicial system.

Judge Howard may best be described as a person of firsts: the first black lawyer to win a 15-year term on the Supreme Bench of Baltimore City and the first black lawyer to gain admission to Phi Alpha Delta, the national legal fraternity. I called Judge Howard a person of firsts, but I did so with hesitation because the judge does not like labels. What I really want to do is share a little bit about what makes Judge Howard so unique. What makes him unique is his refusal to bow to authority and the status quo when he thinks that change is necessary. Judge Howard has never forgotten his responsibility to the black community and has continuously fought for their rights whenever he saw those rights impinged upon by the judicial system. Judge Howard is a fighter for the ideals he believes in and I like that.

Recognizing that the legal system is often inadequate to deal with the problems of the poor, Judge Howard has refused to let class considerations enter into his practice as a jurist. He has never forgotten about the ordinary person on the street and about the conditions on those streets which bring a person to his courtroom. He is respected for judicial decisions based upon the individual merits and circumstances of the case, not upon the popular public sentiment of the day. In addition, Judge Howard fought to have blacks better represented in the legal profession and in the courthouse personnel.

Some of the judge's biggest fans are young people: The young lawyers in his courtroom who learned under Judge Howard without belittlement and the young courthouse employees who always find an open door at Judge Howard's chambers. Since 1979, when President Carter nominated Judge Howard as the first black Federal judge in Maryland, Judge Howard has been admired as a good listener who patiently permits lawyers before him to argue all aspects of a case. Judge Howard has shared his knowledge and skills by serving the National Bar Association in a number of positions and by serving as a visiting law professor at several prominent universities. Finally, Judge Howard has been a vocal advocate for many underrepresented groups facing inequities in the court system.

Judge Howard is the author of several distinguished publications and enjoys numerous awards and recognitions from his alma mater, Drake University, and from organizations like the National Association of Negro Business and Professional Women's Clubs, Inc.

A man of integrity and a man unafraid to speak his opinion, Judge Howard is to be commended for his public service to the State of Maryland and indeed to this entire country. He is a model for young people today. Judge Howard has demonstrated strength in the face of adversity and controversy and is a fine civic leader and distinguished jurist. I am proud to honor this upstanding Maryland judge.•

THE INTELLIGENCE REORGANIZATION ACT OF 1992

• Mr. MURKOWSKI. Mr. President, over the recess Senator BOREN and I

each gave a great deal of thought to what we wanted to accomplish during our final year as chairman and vice chairman of the Senate Select Committee on Intelligence. We resolved that the reorganization of the intelligence community was our top priority.

The world may be less dangerous, but it is more complicated than ever before. Policymakers need clear information and sharp analysis. The intelligence community must be leaner, more focused, and fully accountable for its estimates and analysis.

Toward that end, Senator BOREN and I worked together on a comprehensive legislative proposal, many elements of which are included in the reorganization bill introduced by Senator BOREN.

Some changes were made to the proposal that Senator BOREN and I worked on, and I am reviewing the implications of these provisions, including the proposal to create a Director of National Intelligence, or DNI. While there is likely to be a great deal of attention and commentary devoted to the notion of an intelligence czar, I want to focus more on the overall structure of the intelligence community with emphasis on ensuring accountability.

Before I sign aboard Senator BOREN's bill or offer other proposals, I will spend a little more time consulting with Representative BUD SHUSTER, the ranking member of the House Permanent Select Committee on Intelligence, as well as administration officials.

However, observers should not read too much into the fact that I am not cosponsoring this bill at this time. Chairman BOREN and I have, and always will operate our Senate committee on a bipartisan basis. As long as I am vice chairman, that will be the case as the Senate considers the important issue of reorganizing the intelligence community.•

IN HONOR OF BLACK NURSES' DAY

• Mr. BRADLEY. Mr. President, I rise in order to commemorate the Black Nurses' Day celebration. Throughout our Nation's history, we know of the invaluable contribution of black nurses, ranging from heroic duty during the Civil War to helping us develop thoughtful measures to address our most pressing needs in our health care system today. Unfortunately, the magnitude of their contribution has not received the attention, notice, reward, or gratitude from our society that they have so richly deserved. Although we cannot change the past, we can stand today to ensure that our black nurses' achievements and ongoing efforts to help care for Americans in need are fully recognized.

Today, the health of our country is in a state of crisis. Health care expenditures are rising exponentially, and efforts to control them have only resulted in costs being shifted and continuing price increases. We know that at least 34 million Americans have no health insurance, and the increasing costs threaten the coverage of millions more.

The numbers are staggering and create a complex set of barriers for us to achieve meaningful health care reform. But these statistics convey little of the real story, of the health care on our streets, in our cities, all across America. The Black Nurses Association's members can tell a more vivid story. For example, the infant mortality rate in the United States is higher than that in virtually every industrialized country. Yet, even that statistic is misleading because the rate is not the same for all Americans. The percentage of babies who die before they reach age one is tripled or quadrupled in many areas of our inner cities, even in our Nation's Capital and in our largest and most famous city, New York City.

Here in Washington DC, residents and visitors alike are struck by the beauty and grandeur of the powerful monuments and buildings that outline the physical structure of the world power. Yet in stark contrast to the pristine pictures of our monuments in a postcard, the city is often viewed as being under siege, with problems of violence, crime, homelessness, and drug use. Visits to hospitals reveal thousands of innocent babies who face a life of disadvantages and possible disabilities because their parents did not have access to prenatal care.

There is an alarming consistency as one studies our Nation's health statistics, that the health problems for our minority populations are significantly worse than that for others. We know that the major cause of these disparities relates not primarily to race, but to the level of education. But, the fact that all of these statistics about health, education, and income status are so highly correlated tells us how far we have to go.

Our society and our Congress are working diligently to find reasonable and responsible solutions to these difficult problems. One of the most valuable resources in our arsenal to confront them is our nurses, those front line care providers who daily handle everything from difficult medical procedures to reassuring and caring for patients in need.

As we move toward comprehensive health care reform, we must carefully listen to the experts who can help us devise throughtful and effective solutions. As we try to create better opportunities for all children to begin their life in good health and with an equal opportunity to reach their greatest potential, we must hear the voices of our most qualified professionals. The efforts of the members of the Black Nurses Association are inspiring and deserve our recognition. On this day celebrated in their honor, congratulations and thank you for your valuable and dedicated service.•

BLACK HISTORY MONTH

• Mr. RIEGLE. Mr. President, every February we celebrate Black History Month to review the rich history of African-Americans. Black History Month has become a vital part in expanding our understanding of the black experience, and is also key to understanding America's experience.

Our Nation has traveled a long way toward living up to the high ideals that we set for ourselves. As we reflect on the progress that we have made, we recognize that it has come because men and women of all walks of life have made heroic personal sacrifices and confronted enormous obstacles in order to build a better society.

Each person who fought for a more just America has made it possible for others to enjoy greater freedom. It is this context that the contributions of African-Americans deserves special recognition. Each generation of African-Americans has helped to pave a better way for the next generation of all Americans. I am proud that the State of Michigan has been home to many great African-Americans.

In the 1800's Sojourner Truth—a woman born into slavery in New York—made her way to Battle Creek to battle against slavery and fight for the rights of women and minorities. She helped thousands of slaves to freedom along the underground railroad that moved from the South through Ohio and Indiana and into Michigan. Communities such as Niles, Battle Creek, and Detroit were home to shelters along that path to freedom.

The Second Baptist Church in Detroit is well-known for its role as a shelter to slaves who fought for their freedom. Many visit the church today and gain awareness about the brutality of slavery and the tremendous courage of those who brought it down.

In the 1950's Rosa Parks, now a resident of Detroit, ignited the civil rights movement in Montgomery, AL, and began the crusade against discrimination and prejudice. And from this beginning, Americans joined to bring down the unjust system of segregation that had prevented millions of people from enjoying the full benefits of their citizenship. Mrs. Parks continues to fight the barriers of injustice through the Rosa and Raymond Parks Institute—an organization that prepares young people for leadership by teaching them of others who have moved our country forward.

I am proud that my hometown of Flint was home to the late Floyd McCree, the first African-American mayor of a major American city. His work on behalf of equal opportunity and his service to the community pro-

vided an outstanding example that has helped to pave the way to full participation in our democratic process for all citizens.

Today, African-Americans in Michigan continue to serve in the notable tradition of those who have strengthened our society. Damon Keith, of Detroit, is highly regarded as a judge on the U.S. Court of Appeals for the Sixth Circuit, one of our Nation's highest courts, and has done much to inspire confidence in our legal system. Last year, he joined a distinguished group of citizens on the U.S. Commission on the Bicentennial of the Constitution.

These are only a few of the many African-Americans who have added to the greatness of our history. There are many others who have advanced our Nation.

Thousands of people in Michigan will take time to honor and recognize the tremendous contributions of African-Americans this month. I believe that it is important that this is done. For many years, history did not adequately recognize the achievements of African-Americans. Black History Month has helped to change that, and it is absolutely critical that we recognize all of the men and women who have built our Nation, so that we may be inspired by their conviction to make this a better place for all Americans.•

HILDRETH, INC.—AMERICA'S OLDEST DEPARTMENT STORE

• Mr. D'AMATO. Mr. President, it is my pleasure to announce the upcoming 150th anniversary of Hildreth Department Store of Southampton, NY. Their proud history also entails the distinction of being America's oldest department store, family owned and operated. Founded by Lewis Hildreth in 1842, the 1,200-square-foot store serviced the needs of Southampton, a seaside farming community, with the basic household provisions and hardwares of the day. An original ledger book from that era shows transactions made in shillings and pence. When Lewis Hildreth died of small pox in 1870, the store was taken over by his widow, Amanda, and their two sons Edgar and Henry. They gave the store its corporate name, E.A.&H. Hildreth.

In the 1870's when the Long Island Railroad extended its service into the Southampton area, the communities growth was greatly expended. The shaded streets and sunny beaches were very attractive to New Yorkers who serched for an unspoiled area to spend their summers. Hildreth's kept pace by doubling its size in 1901, expanding its selection of furniture and housewares.

Over the past many decades Hildreth's has become the focal point of the Main Street shopping district. On any given day you will find many folks enjoying the ambience of Hildreth's as did the villagers of 150 years past. Hildreth's fine reputation, attentive service, and 25,000 square feet of innovative merchandising now services a broad customer base ranging from Manhattan to Montauk Point. The roots of our Nation were established through enterprises such as Hidreth's and our continued commitment to the community remains strong and tireless.

Congratulations to Hildreth's for the many years of innovation and astute merchandising that have allowed them to grow and prosper into the nineties. Best wishes for continued success well into the future.•

NONDISCRIMINATION RETIREMENT RULES

• Mr. PRYOR. Mr. President, one of the primary goals of our pension law is to ensure that rank and file employees receive retirement benefits that are comparable to the benefits provided to higher income employees.

In short, if an employer provides retirement plan benefits in a nondiscriminatory manner among high paid and low paid employees, then the employer may avail himself of the tax benefits afforded qualified retirement plans under the Internal Revenue Code.

Mr. President, these nondiscrimination rules are meant, not only to ensure fair treatment of rank and file workers, but also to help workers provide for themselves during their retirement years. For these reasons, we must also be mindful of their objectives.

In the Tax Reform Act of 1986, Congress revised many of the nondiscrimination rules. Over the course of the past several years, the Treasury Department issued lengthy and complex proposed regulations with respect to the modifications enacted by Congress, including the minimum coverage requirements, section 410(b); the definition of compensation, section 414(s); and the application of the minimum coverage requirements based on separate lines of business, section 414(r).

In addition, in May 1990, Treasury issued a massive proposed regulation under section 401(a)(4) relating to the nondiscrimination rules.

In September and December 1991, Treasury finalized all of these regulations, and as of January 1, 1992, all these regulations had become effective.

Mr. President, these regulations contain hundreds of pages of complex rules and formulas. In a September 1991 hearing before the Finance Subcommittee on Private Retirement Plans and Oversight of the IRS, which I chair, the topic was ways to simplify the pension laws. One witness was compelled to drop on the table in front of him the 600 pages of the 401(a)(4) regulations and throw up his hands.

In addition, the final regulations, particularly the section 401(a)(4) regulations, contained many rules never subject to public comment.

And now, the Treasury Department is asking employers to learn and adapt to the rules almost immediately or, in many cases, retroactively.

Mr. President, this is a pure case of good motive but bad execution on the part of the Treasury Department. In this case, the regulatory process gone awry is undermining the very viability of the private retirement system which it is attempting to protect.

On November 14, 1991, Senator BENTSEN and I wrote Treasury Secretary Brady to request these regulations be delayed.

Further, in a letter to Mr. Brady dated November 25, 1991, all 20 members of the Finance Committee requested the regulations be delayed.

Mr. President, to this day I have heard nothing from the Treasury Department about our request. Therefore, I join Senator BENTSEN in offering this legislation to force a 1-year period of delay and public comment.

Mr. President, I ask that a copy of my statement, the November 14, 1991, letter, and the November 25, 1991, letter be included in the RECORD.

The material follows:

COMMITTEE ON FINANCE,
Washington, DC, November 14, 1991.

Hon. NICHOLAS F. BRADY,
Secretary, Department of the Treasury, Washington, DC.

DEAR SECRETARY BRADY: We are writing to urge you to delay the effective date of the retirement plan nondiscrimination rules recently issued by the Internal Revenue Service.

We strongly believe that the goal of the nondiscrimination rules is a very important one. Our laws should ensure that rank and file employees receive retirement benefits that are comparable to the benefits provided to higher-income employees.

However, we believe that the January 1, 1992 effective date of the pension nondiscrimination regulations is unrealistic. A January 1, 1992 effective date would mean that in the next few weeks pension experts would have to absorb hundreds of pages of new rules and, together with other company officials, make crucial decisions regarding the retirement benefits of millions of employees. Basic decisions about the nation's retirement benefits should not be made in this fashion.

What makes this time frame even more unrealistic is the fact that the regulations are incomplete. Many employers with millions of employees simply cannot apply the new nondiscrimination rules without the benefit of the separate line of business regulations, which have not been finalized. Moreover, a number of new restrictive rules were added in the final regulations without having been included in the proposed regulations. No public comment was received on these new rules. It is our view that these issues should be addressed in a careful and deliberate manner through the regulatory process, if at all possible.

For these reasons, we urge you to delay the effective date of the regulations and to announce your decision to do so promptly. This delay will give the regulatory process time to be completed and will give plan sponsors time to understand and apply the rules that are ultimately adopted.

We believe that the Treasury Department is to be commended for its serious effort to deal with the complex issues surrounding pension plan nondiscrimination rules. But, very simply, the retirement benefits of American workers are too important to be restructured in a few weeks based on incomplete regulations.

Sincerely,

DAVID PRYOR.
LLOYD BENTSEN.

COMMITTEE ON FINANCE,
Washington, DC, November 25, 1991.

Hon. NICHOLAS F. BRADY,
Secretary, Department of the Treasury, Washington, DC.

DEAR SECRETARY BRADY: We are writing to express our continuing and serious concerns over the failure of the Department of the Treasury to delay the effective date of the retirement plan nondiscrimination rules recently issued by the Internal Revenue Service.

As you know, these concerns have been expressed in the past by various members of the Finance Committee. We appreciate your attention to these issues and commend the Treasury Department for its recent attempt to deal with the problem through Notice 91-38.

We believe, however, that the January 1, 1992 effective date of the pension nondiscrimination regulations remains unrealistic, even after the changes proposed in Notice 91-38. Although the Notice is a step in the right direction, it is anything but simple. To the contrary, there appears to be considerable confusion even as to the scope of the Notice. In addition, the Notice does not deal with the many questions that have been raised with respect to the underlying regulations.

There is simply not enough time between now and the end of the year for plan sponsors to make the decisions about their retirement plans that are required by Notice 91-38 and the regulations. Basic decisions about the nation's retirement system should not be made in this fashion.

For these reasons, we urge you to delay the effective date of the regulations and to announce your decision to do so promptly. This delay will give the regulatory process time to be completed and will give plan sponsors time to understand and apply the rules that are ultimately adopted.

The Treasury Department is to be commended for its serious effort to deal with the complex issues surrounding pension plan nondiscrimination rules. But the retirement benefits of American workers are too important to be restructured in a few weeks based on incomplete and complex regulations.

Sincerely,

David Pryor, Lloyd Bentsen, Chuck Grassley, Bill Roth, David L. Boren, Bob Packwood, Dave Durenberger, Jack Danforth, Don Riegle, Bill Bradley, Max Baucus, Steve Symms, John Breaux, Tom Daschle, Orrin Hatch, Daniel Patrick Moynihan, Bob Dole, George Mitchell, Jay Rockefeller, John H. Chafee.•

WORK INCENTIVE CREDIT

• Mr. CRAIG. Mr. President, it is unfortunate that some issues Congress thinks it has laid to rest actually continue to plague our constituents for years and years.

I am addressing just such a case today.

Back in 1990, our colleagues Senator PRYOR and then-Congressman BROWN wrote letters to the Treasury Department, attempting to clarify congressional intent regarding the now-repealed work incentive credit. That correspondence is still significant in an ongoing controversy affecting one of my Idaho constituents.

I have contacted Senators BROWN and PRYOR and received assurances that the letters are accurate reproductions of the originals and they have no objections to their being published in the CONGRESSIONAL RECORD.

And I now ask that the letters of January 19, 1990, and January 29, 1990, be inserted in the CONGRESSIONAL RECORD.

The letters follow:

U.S. SENATE,
Washington, DC, January 19, 1990.

Hon. KENNETH W. GIDEON,
Assistant Secretary of the Treasury, Department of the Treasury, Washington, DC.

DEAR MR. ASSISTANT SECRETARY: I am writing to ask that the Treasury Department clarify the application of section 7644 of the Omnibus Budget Reconciliation Act of 1989 (See enclosed). Guidance is needed because there appears to be confusion among some Treasury and Internal Revenue Service (the "Service") personnel in determining Congressional intent.

Section 7644 settles a long-standing controversy over the now repealed Work Incentive Credit ("WIN Credit"). Prior to January 1, 1982, the law was ambiquous on whether or not an employer could obtain certification for purposes of claiming the WIN Credit subsequent to hiring an employee. Retroactive certification is not an issue for employees hired on or after January 1, 1982, because the Economic Recovery Tax Act ("ERTA") provided specifically that retroactive certification no longer would be permitted.

Chairman Rostenkowski and I introduced legislation in 1987 to resolve this controversy. We acted in response to the announcement by the Service of its position in General Counsel Memorandum 39604 ("GCM") that retroactive certification was not valid even for employees hired before 1982 and thus not covered by the ERTA amendment. I believe that the legislation was needed for two reasons: first, it was not necessary to uphold the Service's GCM position, which in and of itself did not have the force of law; and second, I introduced the bill to protect taxpayers which had certified employees on a retroactive basis before the March 12, 1987 GCM for employees hired before 1982. As I said in my statement of introduction, "in the case of WIN Credits claimed on or before March 11, 1987, the employer is not required to have obtained or requested certification on or before the date the individual commenced work for the employer."

By enacting this provision, Congress intended to avoid unnecessary litigation and possible further revenue loss. Shortly after introduction, the United States Tax Court ruled in Lucky Stores v. Commissioner that Congress, prior to ERTA, had not specified that WIN Credit certification must be contemporaneous with the commencement of employment. Thus, the Court's ruling, opened up the possibility of further retroactive certification despite the GCM cutoff date of March 12, 1987. Most importantly, I believe this case further buttresses the view that it would be unfair to apply the Service's GCM position for credits claimed prior to the GCM announcement.

Finally, I believe that legislation clarifying prospective treatment of the retroactive certification issue was needed as a matter of fairness: the Service waited six years after the ERTA amendment to take a position. Many employers saw the Service's inaction as further proof for the validity of their arguments. Congress affirmed this view by codifying our WIN Credit bill.

It has come to my attention that some Service personnel are unclear about legislation intent. As I have stated in this letter, I believe legislative intent to be quite clear. By establishing a March 12, 1987 effective date, Congress has settled the issue of retroactive certification. To continue the conflict will only result in wasting the Service's time and resources. I would appreciate if the Treasury Department would issue guidance to settle this dispute, which Congress intended to settle with passage of last year's reconciliation bill.

Sincerely,

DAVID PRYOR.

HOUSE OF REPRESENTATIVES,
Washington, DC, January 29, 1990.

Hon. KENNETH W. GIDEON,
Assistant Secretary (Tax Policy), Department of the Treasury, Washington, DC.

DEAR MR. ASSISTANT SECRETARY: The purpose of this letter is to provide the Treasury Department with a clarification of the legislative intent with respect to Section 7644 of the Revenue Reconciliation Act of 1989. It is our hope that Treasury will issue definitive guidance in this regard to assist both its district offices and taxpayers engaged in disputes which are affected by Section 7644.

Section 7644, a provision which deals with the now repealed Work Incentive Credit ("WIN Credit"), first came before the Ways and Means Committee during consideration of the Omnibus Budget Reconciliation Act of 1987 in the form of legislation sponsored by Chairman Rostenkowski. An identical bill was introduced in the Senate by Senator David Pryor. Although the Ways and Means Committee adopted the Chairman's provision, its enactment was delayed until 1989. It is our understanding that the delay was occasioned not by substantive tax policy considerations, but instead, by a decision of the leadership to set aside numerous legislative provisions in order to facilitate the prompt enactment of the 1987 budget act.

In 1989, we moved in the Ways and Means Committee for the adoption once again of the WIN Credit provision. In so doing, we reviewed carefully the legislative history of the Committee's adoption of the provision in 1987, including the Chairman's statement, and discussed the provision with the staff. We acted with a clear understanding of what the provision was designed to do.

In essence, Section 7644 was designed to settle the controversy over whether retroactive certification of WIN Credit eligible employees was permissible under the law for employees hired prior to 1982. This is not an issue with respect to employees hired after 1981, because the Economic Recovery Tax Act ("ERTA") contained a provision eliminating retroactive certification for such employees.

The legal issue is straightforward—to obtain the WIN Credit for any particular employee, the employer was required to request the appropriate state or local government agency to certify that the employee was within one of the groups of individuals for which the credit was available. Prior to

ERTA, it was at best unclear in the law whether the employer was required to request such certification on or before such time as employment commenced. Absent guidance in this respect, some employer filed claims for the WIN Credit where the request for certification was made after employment commenced.

On March 11, 1987, IRS published in General Counsel Memorandum 39604 (the "GCM") its position that retroactive certification for pre-1982 employees was not permitted. Because IRS took this position in 1987 with respect to pre-1982 tax credits, an issue of fairness arose—what should the policy be with respect to credits filed prior to the GCM being announced?

The WIN Credit provision was designed to act with a measure of fairness in the following manner: first, to create as binding statutory law, as opposed to IRS' interpretation of the law, the principle that retroactive certification was not permissible, but, second, to apply that principle only to those employers who filed their claims after the GCM was announced and who were therefore "on notice" of IRS's position. Chairman Rostenkowski's 1987 Congressional Record statement introducing the WIN Credit provision makes this intent clear:

The bill I am introducing today upholds the principle that retroactive certification is an inefficient use of a tax credit, *yet in fairness to taxpayers who acted in reliance on the availability of the WIN credit, applied this principle only to those taxpayers who have received notice of its application.* [Emphasis Added]

The Ways and Means Committee's Report on the Revenue Bill of 1987 reflects the Chairman's intent, stating that "because many taxpayers assumed the availability of the credit for employees for whom the certification was not obtained on or before the day the employee commenced service, the committee believes this provision should be effective with respect only to credits first claimed after the GCM was published on March 11, 1987."

It has come to the attention of our staffs that some IRS personnel place a different interpretation on this provision, namely that it speaks only to credits filed after March 11, 1987 and is otherwise silent, leaving retroactive certification controversies involving credits filed before then open for resolution before IRS and the courts.

Given that the statutory language of the provision considered by the Committee in 1987 and the one enacted by Congress in 1989 are identical, there should be no doubt as to the legislative intent—taxpayers are on notice that retroactive WIN Credit claims filed after March 11, 1987 are not valid. On the other hand, employers who filed claims before March 12, 1987 are not to be charged with knowledge of IRS's position and their claims should not be challenged on the issue of retroactivity.

When the Ways and Means Committee adopted the WIN Credit provision in 1989, a new development, not in existence when the Committee acted in 1987, was taken into account. In May of 1989, the United States Tax Court in *Lucky Stores v Commissioner*, ruled that retroactive certification was valid for employees hired prior to 1982. As a result, we viewed the provision as a revenue raiser, in effect limiting the potential impact of the Court's decision by allowing retroactive certification only for claims filed before March 12, 1987.

It would be most helpful if Treasury promptly would announce its adherence to this interpretation of the WIN Credit provision.

Sincerely,

BYRON L. DORGAN,
HANK BROWN,
Members of Congress.•

SOUTH DAKOTA HONORS CRAZY HORSE AND KORCZAK ZIOLKOWSKI

• Mr. DASCHLE. Mr. President, the Indian chief, Crazy Horse, played a prominent role in American history. Born in the Black Hills of what is now my home State of South Dakota, Crazy Horse was an inspirational leader of the Sioux people. Today, he still stands not only as a powerful role model for native Americans but also as a symbol for all people of the eternal quest for freedom and personal dignity.

Korczak Ziolkowski is another extraordinary figure who nearly 40 years ago dreamed of honoring Crazy Horse by carving a monument to this historic Indian chief from a granite mountain in his sacred Black Hills of South Dakota. In 1949, with the quiet determination of a visionary and a vow never to accept Federal funds for his project, Korczak single-handedly began work on the 600-foot mountain. By 1982, when he died at the age of 74, he had removed over seven millions tons of rock, and the rough form of Crazy Horse on horseback had emerged from the mountain. Today, Korczak's project continues under the supervision of his remarkable wife, Ruth Ziolkowski, who is working with several of her children and members of the Crazy Horse Memorial Foundation to fulfill her husband's dream.

The year 1992 marks the 150th anniversary of Crazy Horse's birth and the 10th anniversary of Korczak Ziolkowski's death. Last month, the South Dakota Legislature passed a commemorative resolution honoring these remarkable men of vision. Their spirit, vision, and achievement hold important lessons for us all, and I ask that a copy of this resolution be printed in the RECORD.

The resolution follows:

SENATE COMMEMORATION NO. 1

Whereas, Crazy Horse, who was born in the Black Hills in 1842, was a remarkable individual whose abilities earned him great respect from his people. After Crazy Horse saw the government fail to honor its treaties, he courageously defended his people and their way of life, and he became a heroic figure to his people and a powerful example for all people of the eternal quest for freedom and peace; and

Whereas, sculptor Korczak Ziolkowski, an American of Polish descent, accepted the invitation of Lakota chiefs to come to the Black Hills to carve a mountain memorial to Crazy Horse. Korczak, who declined governmental funding, depicted Crazy Horse as a proud, symbolic figure representing all tribes of North America. Since Korczak's death on October 20, 1982, his wife, Ruth, and their children have perpetuated his dream with vision and dignity; and

Whereas, the towering figure of Crazy Horse from the granite mountain carving will proclaim for the ages: "My lands are where my dead lie buried":

Now, therefore, be it commemorated, by the Sixty-seventh Legislature of the state of South Dakota that Crazy Horse be honored in 1992, the year of the one hundred fiftieth anniversary of his birth, and that Korczak Ziolkowski be honored during 1992, the tenth anniversary of his death.•

INTERSTATE BANKING AND BRANCHING ACT OF 1992

• Mr. D'AMATO. Mr. President, as a senior Banking Committee member, I have supported legislation to accomplish comprehensive reform of the financial services industry for the past decade. Despite efforts last year to pass such legislation, the bill that passed in the final hours of the first session of the 102d Congress fell far short of its mark.

Indeed, the Federal Deposit Insurance Corporation Improvement Act of 1991 does not reflect today's economic realities nor does it provide sufficient reform of the financial industry to be considered comprehensive reform.

Last year, the Banking Committee held numerous hearings to consider various proposals for achieving comprehensive bank reform. One of these measures, interstate banking and branching, would provide cost savings to banks by allowing the conversion of a bank's subsidiaries into branches. It has been estimated that this consolidation could save the banking industry upwards of $10 billion. Interstate banking and branching would also allow banks to reduce risks through geographic diversification.

Although 33 States have passed laws that allow holding companies from all other States to acquire banks in their State and 14 States allow regional reciprocal banking, interstate banking and branching was not included in the Federal Deposit Insurance Corporation Improvement Act of 1991.

Today, Senator DODD has introduced the Interstate Banking and Branching Act of 1992. I am pleased to be among the original cosponsors of this legislation, along with Senators GARN, SANFORD, and KERRY.

The Interstate Banking and Branching Act of 1992 marks an important step toward accomplishing meaningful bank reform. While I expect there may be modifications to this bill, I hope that Congress will pass this legislation soon. I urge my colleagues to support it.

THE OLDER AMERICANS ACT

• Mr. ADAMS. Mr. President, on November 12 in the last session, we passed unanimously my legislation to reauthorize the Older Americans Act [OAA]. The House also passed its version of the reauthorization legislation unanimously. The Senate named its conferees, including members of the Fi-

nance Committee to address the Senate's provision concerning the Social Security earnings test.

As the session ended, the House had not yet named its conferees. We are waiting for the House to name conferees so we can send the legislation to the President quickly for his signature.

We all know that the delay is over the Social Security earnings test, not anything in the OAA. It is simply unfair to our Nation's elderly and those who serve them with dedication and compassion to not reauthorize the act because of another unrelated matter.

The earnings test must be dealt with. I feel strongly about that. Its current limit is unfair. Let's fix that. But let's not delay sending a positive message of help to millions of seniors while trying to figure out what to do about a very important but unrelated problem.

Mr. President, the OAA provides critical services for great numbers of older citizens. Every single Member of Congress has low-income senior constituents who eat nutritionally sound meals at OAA funded congregate meal sites. For those who are too frail or are recuperating from an illness, the act provides home-delivered meals.

A substantial portion of OAA funds is used to provide transportation for essential services—to visit the doctor, to attend a meal site, to go to Social Security about a lost check.

Fortunately, in the absence of a national long-term care system, the OAA provides limited but critical support for home care services for the frail elderly.

The largest employment program for low-income Americans over the age of 55 is in the OAA. These part-time minimum wage workers are a source of invaluable help in community services throughout America.

Our reauthorization legislation builds upon and improves these and other programs, and it adds important new provisions to help vulnerable and disadvantaged seniors. Our new elder rights title strengthens ombudsman services for those in nursing homes and will assist seniors victimized by unscrupulous insurance companies.

It includes a new program to provide assistance to family caregivers to enable them to continue the loving care they provide to loved ones suffering from Alzheimer's or other chronic illnesses.

The reauthorization legislation emphasizes health promotion and disease prevention activities that can be carried out in senior centers, meal sites, and other settings. These services are not only essential to leading a healthier and happier life but to reducing health care costs.

And, the OAA legislation does many other things that will help low-income and other seniors in need. But we can't do anything new or improved until the act is reauthorized. We need to finish this job now.

Mr. President, I trust that our colleagues will join me in the commitment to both deal with the earnings test appropriately and not unnecessarily delay badly needed improvements in the Older Americans Act.•

DECEIT WITH REGARD TO THE EARNINGS TEST

• Mr. MCCAIN. Mr. President, as I stated on the floor earlier this week, our Nation's seniors—particularly our Nation's poor seniors—are being severely penalized for Congress' lack of final action on the Older Americans Act, and specifically on the Social Security earnings limit provision which the Senate adopted unanimously.

Accordingly, I was shocked recently when I received a letter on Leadership Council of Aging Organizations' stationary that urged the Congress to strip the Social Security earnings limit from the Older Americans Act, thereby killing any hope of addressing this pressing issue this year. This position is in direct contradiction to the position held by the majority of our Nation's seniors, and all of the Nation's major seniors organizations.

Mr. President, just who does this group represent?

My dismay only deepened after I called the two major seniors organizations, the National Association of Retired Federal Employees and the American Association of Retired Persons—both listed on the letter. Some members of the Leadership Council of Aging Organizations, led by the National Council of Senior Citizens, were so dead set on killing this measure, that apparently NARFE and AARP were included on this letter without their consent.

Had the National Council of Senior Citizens asked these organizations for their permission to add their names, what they would have discovered is that these organizations not only oppose the position the leadership council takes, but believe it is absolutely imperative that the earnings test be dealt with and not dropped as the letter suggests.

It is worth asking if the membership of the National Council of Senior Citizens is aware of the deceitful practices of their leadership?

I wonder how many other organizations are listed on this letter, but which disagree with its contents?

Rather than speak for NARFE and AARP, I ask that their letters in response to the leadership council as well as the letter of the leadership council appear in the RECORD.

As I have said before, it is time we get on with this conference, and get the differences between the Senate and House provisions on the earnings limit and Older Americans Act reauthorization measure resolved. It is time the bill be sent to the President for his signature. Such action would be a true service to our Nation's seniors, particularly those who are most in need.

It is incredible to me that organizations, like the National Council of Senior Citizens would practice such deceit. You know, it's incidents like this that make one wonder just who the National Council of Senior Citizens exists to serve anyway. I am sure their constituency would find it interesting that they are actively working against the interests of this Nation's seniors—particularly those measures that would greatly assist the most needy elderly of our country.

The letters follow:

LEADERSHIP COUNCIL OF AGING ORGANIZATIONS,
Washington, DC, January 23, 1992.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: In November, in the concluding moments of an extended reauthorization process, the Older Americans Act (OAA) was amended on the Senate floor with a provision which would abolish the Social Security retirement test for persons aged 65 through 69. Under that amendment, such persons could work full-time, earn unlimited incomes and continue to receive full Social Security retirement cash benefits.

Precisely because of this amendment, which was not subjected to any prior OAA hearings or discussions, the Senate and House were unable to come to a conference agreement. Two months later the Act remains hostage to this provision, which itself has become a factor in the larger Congressional debate on anti-recession tax and growth measures. There is no indication of any early resolution of that debate.

The undersigned members of the Leadership Council of Aging Organizations unanimously urge a prompt agreement among the leadership to decouple the Social Security issue from the Older Americans Act.

Failure to do so quickly would continue to callously delay implementation of many new OAA initiatives in such areas as elder legal rights, health promotion and long-term care services. Further delay to decouple the issues threaten to more deeply involve the OAA in important but volatile and extraneous partisan and parliamentary struggles.

The Social Security retirement test should face the judgment of the Congress on its own merits. By releasing the Older Americans Act for immediate reauthorization, the Congress can demonstrate its long and positive record of responsive concern for the well-being of the nation's older citizens, their families and their communities.

Sincerely,

LAWRENCE T. SMEDLEY,
Chairman.

JANUARY 23, 1992.

The following LCAO Members endorse the attached letter regarding the Older Americans Act:

American Association of Homes for the Aging.

American Association of Retired Persons.

AFSCME Retiree Program.

American Society on Aging.

Asociacion Nacional Pro Personas Mayores.

Association for Gerontology in Higher Education.

Association for Gerontology and Human Development in Historically Black Colleges and Universities.

Catholic Golden Age.
Eldercare America, Inc.
Families USA.
Gray Panthers.
Green Thumb, Inc.
National Association of Area Agencies on Aging.
National Association of Foster Grandparents Program Directors.
National Association of Meal Programs.
National Association of Nutrition and Aging Services Programs.
National Association of Older American Volunteer Program Directors.
National Association of RSVP Directors, Inc.
National Association of Retired Federal Employees.
National Association of Senior Companion Project Directors.
National Association of State Units on Aging.
National Caucus and Center on Black Aged, Inc.
National Council on the Aging, Inc.
National Council of Senior Citizens.
National Hispanic Council on Aging.
National Pacific/Asian Resource Center on Aging.
Older Women's League.
United Auto Workers Retired Members Department.

NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES,
Washington, DC, February 4, 1992.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: Let me assure you that the National Association of Retired Federal Employees continues to support easing of the Social Security earnings limit. Even though NARFE was listed as a signing organization to a January 23 letter from the Leadership Council of Aging Organizations (LCAO), we had not reviewed and agreed to endorse that call for dropping the earnings limit amendment from reauthorization of the Older Americans Act.

We certainly align ourselves with the LCAO in urging early conference action on the Older Americans Act reauthorization, but NARFE would also hope that this same conference could agree on a formula for liberalizing the Social Security earnings test.

Again, please accept our thanks for your efforts on behalf of all Older Americans.

Sincerely,

HAL PRICE,
President.

AARP,
Washington, DC, February 3, 1992.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Office Building, Washington, DC.

DEAR SENATOR MCCAIN: On January 23, the Leadership Council of Aging Organizations (LCAO) sent a letter to members of Congress urging them to drop the Social Security earnings limit (retirement test) amendment from the reauthorization of the Older Americans Act. Through an error, the letter listed AARP as one of the organizations endorsing this position.

Not only does AARP not endorse this position, we sincerely hope that the conferees on the Older Americans Act will reach an agreement to liberalize the Social Security earnings limit. Both passage of the Older Americans Act and raising the earnings limit are extremely important to older Americans. We do not believe that these issues are in conflict.

If you have any questions about AARP's views on either the Social Security earnings limit or reauthorization of the Older Americans Act, please contact Evelyn Morton at (202) 434-3760.

Sincerely,

HORACE B. DEETS.●

● Mr. COATS. Mr. President, last week's comment by Japan's Prime Minister about the productivity of American workers has drawn much deserved fire. Premier Kiichi Miyazawa's words reflected an arrogant and, frankly, ignorant understanding of the men and women who have made our country the greatest economic force in world history.

Moreover, the Prime Minister's comments are simply wrong. In 1990, Japan's national productivity was only 76.9 percent of the United States—not a very strong basis for a Japanese lecture about the caliber of American workers.

No one needs to teach the people of Indiana anything about the work ethic. Whether in the auto plants of Kokomo and Marion or the steel mills of Gary and Lake County. Hoosier labor has for decades made ownership of a high-quality, affordable car a reality for virtually all Americans. In most of the rest of the world, car ownership is only a dream.

Indiana employs the Nation's second-largest auto industry labor force, Hoosiers whose contributions have helped lead to an 8.3 percent increase in American auto sales last month as compared to a year ago.

Hoosier industries have built America, and Hoosier farms have fed it—and the story of Hoosier workers continues, stronger and more vibrant with the passage of time.

Still, our economy is in need of help. That's why I have spoken out strongly for tax relief for families and working Hoosiers as well as restraint in Government spending.

Hoosiers can take pride in their productivity, their tradition of economic achievement, and their historic commitment to excellence in the work place.●

MEASURE INDEFINITELY POSTPONED—S. 1194

Mr. MITCHELL. Mr. President, I ask unanimous consent that Calendar No. 114, S. 1194, the Urban Mass Transportation Amendments Act, be indefinitely postponed.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar 487. G.O. Griffith, Jr., to be Assistant Secretary for Intergovernmental and Interagency Affairs, Department of Education.

The following nominations reported today by the Committee on the Judiciary:

David W. McKeague, to be U.S. district judge;

Nancy G. Edmunds, to be U.S. district judge;

Philip G. Reinhard, to be U.S. district judge;

Sandra S. Beckwith, to be U.S. district judge;

Steven D. Merryday, to be U.S. district judge;

Frederick J. Scullin, Jr., to be U.S. district judge;

Ronald M. Whyte, to be U.S. district judge;

Julie E. Carnes, to be U.S. district judge;

K. Michael Moore, to be U.S. district judge; and

Jon P. McCalla, to be U.S. district judge.

I further ask unanimous consent that the Senate proceed to immediate consideration, and 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.

So the nominations were considered and confirmed as follows:

DEPARTMENT OF EDUCATION

G.O. Griffith, Jr., of Mississippi, to be Assistant Secretary for Intergovernmental and Interagency Affairs, Department of Education, vice Michelle Easton.

THE JUDICIARY

David W. McKeague, of Michigan, to be U.S. district judge for the Western District of Michigan.

Nancy G. Edmunds, of Michigan, to be U.S. district judge for the Eastern District of Michigan.

Philip G. Reinhard, of Illinois, to be U.S. district judge for the Northern District of Illinois.

Sandra S. Beckwith, of Ohio, to be U.S. district judge for the Southern District of Ohio.

Steven D. Merryday, of Florida, to be U.S. district judge for the Middle District of Florida.

Frederick J. Scullin, Jr., of New York, to be U.S. district judge for the Northern District of New York.

Ronald M. Whyte, of California, to be U.S. district judge for the Northern District of California.

Julie E. Carnes, of Georgia, to be U.S. district judge for the Northern District of Georgia.

K. Michael Moore, of Florida, to be U.S. district judge for the Southern District of Florida.

Jon P. McCalla, of Tennessee, to be U.S. district judge for the Western District of Tennessee.

STATEMENT ON NOMINATIONS OF STEVE MERRYDAY AND MIKE MOORE

Mr. MACK. Mr. President, it is with great pleasure that I introduce to you

Steven D. Merryday and K. Michael Moore, nominees for the U.S. District Court in Florida.

I am pleased to report that this morning, Steven and Mike were approved by the Senate Judiciary Committee and their nominations await confirmation by the full Senate. I would like to take a few moments to express my unqualified support for both of these fine gentlemen.

Steve Merryday was born in Palatka, FL, and graduated Phi Beta Kappa from the University of Florida in 1972 with a Bachelor of Arts degree. He also attended law school at the university, and earned his J.D. in 1975. During his years at the university, Steve earned many outstanding distinctions. To name but a few, Steve served as student body president; was a member of the Law Review; Florida Blue Key Leadership Honorary; the University of Florida Hall of Fame; and was selected as the University of Florida nominee for a Rhodes Scholarship.

Upon completion of law school in 1975, Steve practiced with Holland & Knight law firm, where he specialized in civil litigation in both State and Federal court. In 1983, he started his own successful law firm, Glenn, Rasmussen, Fogarty, Merryday & Russo.

In the course of his professional career, Steve has been very involved in the Florida Bar and related professional activities. From 1986 to 1988, Steve served as chairman and vice chairman of the Thirteenth Judicial Circuit Grievance Committee. He has also served on the Appellate Court Rules Committee of the Florida Bar and as chairman of the Hillsborough County Bar Association's Education, Liaison, and Rules Committee. He currently serves as a member of the Florida Bar Board of Bar Examiners.

Based on his superb academic qualifications and his commitment to the profession, it is evident that Steve Merryday is extremely well-qualified to fill this judgeship in the Middle District of Florida.

Mike Moore was born in Coral Gables, FL, and graduated from Florida State University in 1972 with a Bachelor of Arts degree. Mike earned his law degree from Fordham Law School in 1976.

Mike's commitment to Federal service began immediately upon his graduation from law school. From 1976 through 1981, Mike served as an Assistant U.S. Attorney for the Southern District of Florida. During 1979 and 1980, he also attended the gift and estate tax program at the University of Miami School of Law.

In 1981, Mike transferred to the U.S. Attorney's Office in the Northern District of Florida and was promoted to Supervisory Assistant U.S. Attorney. From 1982 until 1987, Mike served in various supervisory capacities in the U.S. Attorney's office.

In 1987, in recognition of his outstanding legal work, Mike was appointed U.S Attorney for the Northern District of Florida. Mike continued to serve as U.S. Attorney until President Bush appointed him to his current position as Director of the United States Marshals Service.

I believe that Mike's 15 years of Federal service, his professional experience and his unwavering commitment to the Federal judiciary—evidence that he is extremely well-qualified to fill this vacancy in the Southern District of Florida.

I urge the Senate to confirm both of these outstanding nominees.

LEGISLATIVE SESSION

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

AUTHORITY FOR PRINTING COPIES OF THE CONSTITUTION OF THE UNITED STATES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 206, a concurrent resolution authorizing the printing of additional copies of the Constitution of the United States, just received from the House; that the concurrent resolution be agreed to and the motion to reconsider adoption of the resolution be laid upon the table.

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

So the concurrent resolution (H. Con. Res. 206) was agreed to.

APPOINTMENTS BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 94-201, appoints Juris K. Ubans, of Maine, to the Board of Trustees of the American Folklife Center.

The Chair, on behalf of the President pro tempore, pursuant to Public Law 101-445, appoints Lynn Parker, of Virginia, to the National Nutrition Monitoring Advisory Council.

ORDERS FOR TOMORROW

Mr. MITCHELL. I ask unanimous consent that when the Senate recesses today it stand in recess until 9 a.m. on Friday, February 7; that when the Senate convenes on Friday, the Journal of Proceedings be deemed approved to date; the time for the two leaders be reserved for their use later in the day; and there be a period for the transaction of routine morning business until 10:30 a.m. with Senators permitted to speak therein and with the time from 9 to 9:45 under the control of Senator NUNN and the time from 9:45 until 10:30 under the control of Senator DASCHLE or his designee; that the Senate resume consideration of the pending business between 10:30 and 12:30 p.m. on Friday; and that at 12:30 p.m., the Senate again resume morning business with Senator BYRD to be recognized to speak at that time, for 1½ hours.

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

PROGRAM

Mr. MITCHELL. Mr. President, there will be no further rollcall votes this evening or tomorrow.

The Senate will be in session at 9 o'clock. There will be morning business until 10:30. We will return to consideration of this bill at 10:30 for 2 hours to complete the business to which the distinguished Senator from Louisiana earlier referred.

At 12:30, the Senate will return to morning business for the purpose of permitting Senators to address the Senate, and will continue throughout the day for as long as is necessary to permit those Senators who wish to speak to do so.

RECESS UNTIL 9 A.M. TOMORROW

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess as under the previous order.

There being no objection, the Senate, at 10:23 p.m., recessed until Friday, February 7, 1992, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate, February 6, 1992:

DEPARTMENT OF EDUCATION

G.O. GRIFFITH, JR., OF MISSISSIPPI, TO BE ASSISTANT SECRETARY FOR INTERGOVERNMENTAL AND INTERAGENCY AFFAIRS, DEPARTMENT OF EDUCATION.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

SANDRA S. BECKWITH, OF OHIO, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO.

RONALD M. WHYTE, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA.

PHILIP G. REINHARD, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS.

JON P. MCCALLA, OF TENNESSEE, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE.

JULIE E. CARNES, OF GEORGIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA.

NANCY G. EDMUNDS, OF MICHIGAN, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN.

DAVID W. MCKEAGUE, OF MICHIGAN, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN.

FREDERICK J. SCULLIN, JR., OF NEW YORK, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK.

STEVEN D. MERRYDAY, OF FLORIDA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA.

K. MICHAEL MOORE, OF FLORIDA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA.