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Senate

The Senate met at 9:31 a.m. and was called to order by the Honorable SAM BROWNBACK, a Senator from the State of Kansas.

The PRESIDING OFFICER. Today's prayer will be offered by Rabbi Arnold E. Resnicoff, U.S. Navy, Retired.

PRAYER

The guest Chaplain offered the following prayer:

O Lord who taught us all to love our neighbors as ourselves, we pause now, before this Senate session starts, to recall that on this day—in 1881—and in this city—Washington, DC—Clara Barton and a group of friends founded the American Red Cross.

To love our neighbor as ourselves . . . and then, to not sit idly by that neighbor's blood—the suffering that he or she endures—without doing what we can to ease the burden and the pain, has been the call to which so many Red Cross workers have responded since that day, throughout our land; and reaching out to those who serve in our Armed Forces overseas—throughout the world, as well.

Almighty God, we give our thanks for those who give their all, who do their best to comfort those in pain. But we pray as well to be inspired by their work, to understand we all can make a difference in our neighbors' lives, a difference in our Nation's strength, a difference in our world. Help us help one another do our part to build the world of peace, the time of joy, for which we pray. And may we say, Amen.

PLEDGE OF ALLEGIANCE

The Honorable SAM BROWNBACK led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 21, 2003.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SAM BROWNBACK, a Senator from the State of Kansas, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

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

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The acting majority leader, the Senator from Colorado, is recognized.

SCHEDULE

Mr. ALLARD. Mr. President, the Senate will resume debate on the national Defense authorization bill for fiscal year 2004. Under the previous order, there will be 20 minutes remaining for debate in relation to the first- and second-degree amendments which are pending to the Defense bill. Following that debate, the Senate will vote in relation to the Warner second-degree amendment regarding low-yield nuclear weapons. Senators should therefore expect the first rollcall vote to occur at approximately 10 o'clock this morning.

Following the disposition of these amendments, additional amendments are expected, and therefore rollcall votes are expected throughout the day. It is still hoped we will be able to complete action on this important legislation during today's session.

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, we also hope to finish at least the amendments we know of that deal with things nuclear on this bill. Senator DORGAN is standing by, ready to offer the next amendment. He has indicated he would agree to a time limit. I believe the amendment has been shown to the other side to see if they would be willing to enter into a reasonable time limit. Last night, he suggested an hour and a half equally divided. We will submit that to staff and see if we can get something worked out and agree to that in a short time, hopefully before the vote takes place.

RESERVATION OF LEADER TIME

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

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 1050, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1050) to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Pending:

Reed amendment No. 751, to modify the scope of the prohibition on research and development of low-yield nuclear weapons.

Warner amendment No. 752 (to amendment No. 751), in the nature of a substitute.

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

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The ACTING PRESIDENT pro tempore. Under the previous order, there are now 20 minutes equally divided for consideration of amendments Nos. 571 and 572, with the time controlled by the Senator from Virginia, Mr. WARNER, or his designee, and the Senator from Rhode Island, Mr. REED, or his designee.

Who seeks time?

The Senator from the great State of Colorado.

AMENDMENT NO. 752 TO AMENDMENT NO. 751

Mr. ALLARD. Mr. President, I rise in support of the Warner second-degree amendment to the Reed amendment in the form of a substitute.

The amendment would strike the Reed-Levin amendment, thereby retaining the repeal of the ban on research and development of low-yield nuclear weapons that is in the committee bill. The amendment would also require that the Department of Energy receive an authorization from the Congress for engineering development, and all subsequent phases of weapons development, before commencing with such activities. This amendment would make it absolutely clear that it is the prerogative of Congress to decide on the funding necessary for the administration to proceed with engineering development of a low-yield nuclear weapon, but it will not stop the military planners and weapon designers from considering and proposing such development.

Even after repealing the ban, as we did in the committee bill, the administration is still required to specifically request funding at each phase of research and development, as required by the National Defense Authorization Act for fiscal year 2003. With this amendment, the Department of Energy would be required to receive an authorization from Congress before commencing with the engineering development of low-yield nuclear weapons. Congress would have another opportunity to review such activities if they are requested by the administration.

This amendment provides for appropriate congressional review and oversight without incurring the disadvantages of an outright ban on some portions of research and development. Retaining a ban on development, acquisition, and deployment of low-yield nuclear weapons, would continue the ''chilling effect'' on exploration of certain advanced nuclear weapons concepts because few will choose to work on these concepts if their development or production is prohibited. Also, the Department of Defense will not spend precious research dollars on a weapon type they have little chance of fielding.

I urge support of this amendment. I believe this amendment addresses in a serious way the concerns expressed by some of my colleagues. This amendment would provide all the transparency required to ensure the administration can proceed with research and development of low-yield nuclear weapons, but not until Congress has an opportunity to review the request and affirmatively authorize engineering development activities.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from the great State of Rhode Island.

Mr. REED. Mr. President, I ask unanimous consent that Senator FEINSTEIN be added as a cosponsor of my amendment.

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

Mr. REED. Mr. President, I rise in opposition to the Warner amendment and support of the underlying amendment which I proposed. I will make several points.

First, the notion of low-yield nuclear weapons is something of a misnomer. Indeed, it is misleading. These are nuclear weapons with horrific blasts and radiation effects. As I said yesterday, it is probably more accurate to say not low yield but small Apocalypses because, when we use nuclear weapons, we go beyond—except for one occasion in the history of warfare—what most military people contemplate as the appropriate use of force.

There is no military requirement for these weapons. Ambassador Brooks, the head of NNSA was asked, Is there a requirement? His answer succinctly and conclusively: No. Yet we are eliminating the ban on the research, development, production, and testing of these low-yield nuclear weapons.

Once again, low yield is a misnomer. These weapons are 5 kilotons or less. The weapons used against Japan in World War II were 14 to 21 kilotons with devastating effects. These small weapons are a third that size—still horrendous weapons.

Now, unless we act today, this approach will not simply result in research. It will result inevitably, inexorably, in the development and the testing and the fielding of these weapons. That is essentially what was said by Ambassador Brooks when he testified before the committee. His words: I have a bias in favor of something that is the minimum destruction. That means I have a bias in favor of that which might be usable.

This is not just research. This is creating weapons that will be used. His comments were echoed with respect particularly to the robust nuclear earth penetrator when Fred Celec, Deputy Assistant to the Secretary of Defense for Nuclear Matters, is quoted: If we can develop a system that can crack through the rock and detonate a hydrogen weapon, in his words, it will ultimately get fielded.

To field an atomic weapon it first must be tested. And we are walking down a path of testing and fielding that I think we will all regret.

There is a presumption that arms control does not matter, it does not work. Why did three nations—Belarus, Kazakhstan, and Ukraine—turn over voluntarily their nuclear weapon and join the nonproliferation regime? Why? Because there is an international norm that nuclear weapons should not be used. In fact, there should be efforts to eliminate their existence. These efforts and these norms are being undermined by the abolition of this ban.

This ban is more powerful than simply saying that the Congress will approve it. Why believe a scientist will say: I won't work on research unless I can produce and blow something up, an atomic weapon. If those are the scientists we have working, then perhaps we should look around for some other scientists. They, more than many other people, understand the power and the devastating effect of these weapons.

If we are really talking about research, let's make it research, not the back door to testing, development, and deployment. My amendment makes it much clearer that is what we are talking about. Indeed, my colleagues came to the floor yesterday and said this has nothing to do with deployment; it is all just science; we have to raise these issues; we have to ask these questions; intellectual curiosity and honesty must be respected in this realm as elsewhere.

Indeed, yesterday, Secretary Rumsfeld was asked: Are you pursuing nuclear weapons? His response: To pursue? I think it is a study. It is not to develop—his words—it is not to deploy, it is not to use, it is to study.

That is what the Reed amendment says. Essentially it says we will allow the scientists who operate in phase 1 through 2A of our well-defined process—research, development—but at the third phrase, that is where they stop. And similarly, if they are modifying a weapon rather than developing one from scratch, you would stop at phase 6.3. It is clearly defined.

The Warner amendment suggests we eliminate all of these prohibitions and we simply say: If you are going over here, come back to us and ask for permission. Functionally, in both amendments the Department of Energy and the Department of Defense would have to come to us. But there is a much more powerful, much more forceful, much more effective symbol if this moratorium is retained.

A few weeks ago, the Government of Pakistan offered to go nuclear free. They said: We would like to eliminate nuclear weapons on the subcontinent. The Indians would have to agree. That is a very interesting and very positive approach. The problem is, how do we reinforce that effort when we are not talking about going nuclear free? We are talking about new nuclear weapons, more sophisticated weapons that can be used. That will not encourage the Pakistanis to give up weapons, or the Indians. I think it will encourage their scientists to start looking at more and new technology.

We can make a difference if we maintain this ban by allowing what everyone says. That is all we want. We just

want the opportunity to research. The Reed amendment gives that opportunity.

I yield the floor and I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. WARNER. What is the balance of time remaining?

The ACTING PRESIDENT pro tempore. The Senator from Virginia has 7 minutes and the Senator from Rhode Island has 3 minutes 10 seconds.

Mr. REED. Mr. President, I yield the ranking member, the Senator from Michigan, 2 minutes.

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

Mr. LEVIN. I thank the Senator from Rhode Island for this very important amendment. The bill before the Senate, unless this amendment passes or the Warner amendment passes, removes a 10-year prohibition we have had on research and development of new nuclear weapons that could lead to their production.

Yesterday, we were assured by speaker after speaker who supports removal of that prohibition that all that is intended is to remove the prohibition of research. So the amendment of Senator REED says, let us put that, then, clearly, into this bill; that what will be prohibited will be the development of new nuclear weapons.

What is very disturbing and why this amendment is so essential, the administration's position is reflected by the Deputy Assistant to the Secretary of Defense for Nuclear Energy, a man named Fred Celec, who says that if a hydrogen bomb can be successfully designed to survive a crash through hard rock, it will get fielded.

We have been assured by the opponents of the prohibition that, no, this is just research we are talking about. So the amendment of Senator REED puts that clearly into law that what we are now allowing is research; that the prohibition on development will stay. That is a very important, clear message to the rest of the world. We are telling North Korea we do not want you to go there. We may militarily act to prevent you from going to the development and the production of new nuclear weapons. So it is essential that this body send a clear statement that we still have a prohibition on development, although now research would be permitted.

I thank, also, Senator WARNER. Even though I think the Reed amendment is clearly better, and the message stronger that we are not removing the prohibition on development by allowing the research, Senator WARNER's second-degree amendment is also a constructive addition to this debate and would be surely better than not acting at all.

Mr. WARNER. Mr. President, I thank both colleagues, the Senator from Rhode Island and the Senator from Michigan. I pick up on the statement of my working partner here for so many years, the distinguished ranking member.

What the Senator from Virginia is endeavoring to do today is much like what the Senator from Michigan was endeavoring to do during the markup.

Let us quietly try to assist our colleagues as they formulate their decisions as to what position to take. The Senate spoke yesterday to the effect that we are not going to impose a ban on research. I say to the Senate, that was a wise decision. We should continue with the basic theme that we are not going to impose a ban on this Nation with respect to this system or any other system which may be needed for the defense of this Nation—hopefully, never in terms of weapons of mass destruction—but we cannot send a message to the world that we are just going to ignore the fact that they exist in many parts of the world. We have to maintain a credible inventory ourselves as a deterrent against others who might threaten us. So we should not have a ban. But what we should have is in place a law which is clearly understandable.

Now my colleagues go back and try to revise the existing law which has been in effect since 1994, which I say, with no disrespect to my colleagues. But when it was written—it is very convoluted, it is very difficult to understand because it says: ''LIMITATION—The Security of Energy may not conduct, or provide for the conduct of, research and development''—now they strike those words and put in their own—''which could lead to the production by the United States of a low-yield nuclear weapon. . . .''

Now, I have here a list of the seven steps followed in the life of a nuclear system. The first three—the concept study, the feasibility study, the design definition and cost study—have been authorized by the Senate as of yesterday in this amendment.

So we are at this juncture, as my colleague from Rhode Island points to his chart, where the balance of these steps toward the full implementation of a nuclear system should be put in control of whom? And I say it should be put in control of the Congress of the United States, with very clear language.

The statute, I say to my friend from Rhode Island, which you are trying to amend simply says, ''The Secretary . . . may not conduct, or provide for the conduct of'' this next step, full-scale engineering development.

Theoretically, if you are so distrustful of the executive branch—whether it is this one or a subsequent—they could jump over that—not easily but they could jump over and go on to the other steps. So the way this thing is written, it is very awkward. It says it only stops one step.

So I say that is a bad way to go about it. I say the better, wiser way, as Senator LEVIN said, is the constructive way, as he pointed out in my amendment. It simply says we are not going to point to one step, we are going to point to all the steps and say as follows: ''The Secretary of Energy may not commence the engineering development phase''—that is the one you are endeavoring to block by amending this old statute—but I go on: ''or any subsequent phase, of a low-yield nuclear weapon unless specifically authorized by Congress.''

That language is as clear as crystal. This language is very awkward to interpret and read. It has a flaw in it, that you could literally jump over the one step that you are blocking and proceed, in some manner, albeit not the best, but proceed to the other steps.

My amendment stops it. It is like a stop sign that says: We will not proceed as a nation until this body, the Congress of the United States, acts to authorize and appropriate the funds.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

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

The ACTING PRESIDENT pro tempore. The Senator has 1 minute remaining.

Mr. REED. Mr. President, this is not an issue of drafting or clarity of language. The amendment I propose is very clear. It simply takes the existing ban and walks it back from phase 1, phase 2, and phase 2–A to phase 3. If this language was unclear, then the Department of Energy and the Department of Defense would have leaped over these barriers a long time ago because they would have ignored the first phase and gone to the third, fourth, and fifth phase.

This is about whether we are going to begin a new but different nuclear arms race. Last week, President Putin announced that Russia is beginning to develop new weapons. His words:

> I can inform you that at present the work to create new types of Russian weapons, weapons of the new generation, including those regarded by specialists as strategic weapons, is in the stage of practical implementation.

Most analysts interpret that as meaning they are going to develop low-yield nuclear weapons. With those remarks in the Russian Duma, initiating a reversal of history, of the beginning of a new arms race, the Duma applauded. I hope we do not applaud here today.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. WARNER. Mr. President, how much time remains on our side?

The ACTING PRESIDENT pro tempore. The Senator has 2 minutes.

Mr. WARNER. Mr. President, in the spirit of fairness, I am going to read, once again, the Warner amendment, which says: ''The Secretary of Energy may not commence the engineering development phase''—that is the phase blocked—''or any subsequent phase, of a low-yield nuclear weapon unless specifically authorized by Congress.''

Where in the old statute is there any phrase as clear as the one in the Warner amendment which says: Mr. Secretary, you cannot do anything until you are authorized by the Congress?

Mr. REED. Will the Senator yield?

Mr. WARNER. Yes.

Mr. REED. I do not have the statute before me but the——

Mr. WARNER. Let me provide it to you.

Mr. REED. Let me tell you this: The original moratorium said: The Secretaries of Energy and Defense may not initiate research and development leading to the production of a low-yield nuclear weapon. We have replaced the term ''research and development'' with the development definition ''development engineering'' leading to the production of a nuclear weapon.

Essentially, what we have done, Mr. Chairman, is we have taken the existing ban, which the DOE says restricts their efforts to do any meaningful research, and simply said do the research.

Mr. WARNER. Mr. President, I reclaim my time.

The ACTING PRESIDENT pro tempore. The Senator from Virginia does have the floor.

Mr. WARNER. You cannot point to any language which speaks to this issue with clarity, so it can be understood the world over, as does the Warner amendment. It is as simple as that.

Mr. REED. Mr. Chairman, with all due respect, if I may have a moment, I think the world is pretty clear as to what is taking place. Your amendment strikes the ban. We used to have a prohibition against low-yield nuclear weapons development. Your amendment strikes that. In place, you say you have to come back to Congress.

Mr. WARNER. Mr. President, the Senate did that yesterday.

Mr. REED. My amendment leaves the ban in place.

The ACTING PRESIDENT pro tempore. The Senator's time has expired. All time has expired.

The question is on agreeing to the second-degree amendment.

Mr. WARNER. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. The yeas and nays have already been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay''.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 59, nays 38, as follows:

[Rollcall Vote No. 187 Leg.]

YEAS—59

Alexander	Dole	McConnell
Allard	Domenici	Miller
Allen	Ensign	Murkowski
Bayh	Enzi	Nelson (NE)
Bennett	Fitzgerald	Nickles
Bond	Frist	Pryor
Breaux	Graham (SC)	Roberts
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Shelby
Campbell	Hatch	Smith
Chambliss	Hutchison	Snowe
Cochran	Inhofe	Specter
Coleman	Kyl	Stevens
Collins	Landrieu	Sununu
Conrad	Lieberman	Talent
Cornyn	Lincoln	Thomas
Craig	Lott	Voinovich
Crapo	Lugar	Warner
DeWine	McCain	

NAYS—38

Akaka	Dodd	Leahy
Baucus	Dorgan	Levin
Biden	Durbin	Mikulski
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carper	Inouye	Rockefeller
Chafee	Jeffords	Sarbanes
Clinton	Johnson	Schumer
Corzine	Kennedy	Stabenow
Daschle	Kohl	Wyden
Dayton	Lautenberg	

NOT VOTING—3

Edwards	Graham (FL)	Kerry

The amendment (No. 752) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, if I could address the Senate——

The ACTING PRESIDENT pro tempore. The question is on the underlying amendment.

Mr. WARNER. This amendment is in the nature of a substitute. However, in fairness to my colleagues, last night the distinguished ranking member and I made an agreement that we would vote once again because there could be colleagues who wish to now join in supporting this amendment.

The yeas and nays have been ordered. Am I correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. WARNER. Perhaps we could have a 10-minute vote.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. Mr. President, I ask unanimous consent that be the case.

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

Mr. REID. Mr. President, how long did the last vote take?

The ACTING PRESIDENT pro tempore. Thirty minutes.

Mr. REID. Mr. President, if we are going to finish the bill and if Members want to do it in the next day or two, I suggest that we should have some constraint on the time we are voting.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Rhode Island. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea''.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 188 Leg.]

YEAS—96

Akaka	DeWine	Lott
Alexander	Dodd	Lugar
Allard	Dole	McCain
Allen	Domenici	McConnell
Baucus	Dorgan	Mikulski
Bayh	Durbin	Miller
Bennett	Ensign	Murkowski
Biden	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (SC)	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Byrd	Hagel	Rockefeller
Campbell	Harkin	Santorum
Cantwell	Hatch	Sarbanes
Carper	Hollings	Schumer
Chafee	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Clinton	Inouye	Smith
Cochran	Jeffords	Snowe
Coleman	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kohl	Stevens
Cornyn	Kyl	Sununu
Corzine	Landrieu	Talent
Craig	Lautenberg	Thomas
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lincoln	Wyden

NOT VOTING—4

Edwards	Kerry
Graham (FL)	Lieberman

The amendment (No. 751) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, how long did that vote take?

The PRESIDING OFFICER. Thirty-two minutes.

Mr. REID. We have been approached in the minority on several occasions today asking when could we finish this bill. We are doing our best. We have people who want to offer amendments. We have wasted at least a half hour this morning on people not being here for votes. I personally believe, for Democrats and Republicans, if they are not here at a reasonable time, the vote should be cut off. This is not fair. We have Senator DORGAN who has waited all morning. Senator COLLINS is here.

I am not going to elaborate further, but this is not good for the Senate. I hope the majority leader will call these votes more quickly. We get the hue and cry to speed things up. If we waste all time during the votes, there is nothing to speed up.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I share the sentiments of my distinguished colleague, but I do observe that the delay on this vote, while it was the last vote on this side, there was a vote on the Democratic side not more than 5 minutes before. We share equally the burdens of the need to move forward on both sides of the aisle.

Mr. REID. I say to my most distinguished friend, I said in my statement, this applies to Democrats and Republicans.

Mr. WARNER. Right.

Mr. REID. Mr. President, the problem we have over here is we cannot say the vote is over. The Senator's side can call the votes. I hope they do it more quickly. If people start missing votes, then fewer people will have to wait around in the future.

Mr. WARNER. Mr. President, I will speak with my distinguished leader and ask if he will give me that unfortunate authority to exercise. If he does, I will exercise it appropriately.

Mr. REID. Mr. President, Senator DORGAN last night said he would agree to 45 minutes. We have a unanimous consent request the distinguished manager of the bill will offer. It is my understanding that prior to his starting, there is going to be 5 minutes for the Senator from Maine on an amendment that has been agreed to.

Mr. WARNER. I thank our distinguished leader. May I propound the UC first on the time? Then we will recognize the Senator from Maine for not to exceed 5 minutes. Then the distinguished Senator from North Dakota can proceed under the time agreement; is that agreeable?

Mr. REID. Of course.

Mr. WARNER. Mr. President, I ask unanimous consent that there be 90 minutes equally divided for the debate in relation to the Dorgan low-level yield amendment prior to a vote in relation to the amendment, and that no amendments be in order to that amendment prior to the vote.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Mr. President, my amendment is not a low-level yield amendment.

Mr. WARNER. The Senator is correct. There is a misstatement in the written text handed to the manager. I apologize. I read it. The Senator is correct. It is the other subject. I ask that the UC be amended accordingly to the statement by the Senator.

The PRESIDING OFFICER. Is there objection?

Mr. TALENT. Reserving the right to object, since I understand this follows the Collins amendment and I think the Senator had mentioned 5 minutes for that, there are three of us here to speak on the amendment. We want to see if we can get another couple of minutes so we have some time to actually say something. If this UC is dependent on that, I raise that issue.

Mr. WARNER. I think it is a fair issue to be raised. I was unaware there were additional speakers. If the Senator will give me a moment.

Mr. REID. Mr. President, if I may interrupt my friend from Virginia, how much time?

Mr. WARNER. Ten minutes allocated? I ask the distinguished Senator from North Dakota. Mr. President, I will make a deal, I will yield 10 minutes of my time under this UC request to take that up. How about that?

Mr. REID. We accept that.

Mr. WARNER. I thank the Senator.

Mr. TALENT. I thank the chairman.

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

The Senator from Maine.

AMENDMENT NO. 757

Ms. COLLINS. Mr. President, on behalf of myself, Senator TALENT, Senator HUTCHISON, and Senator SNOWE, 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 Maine [Ms. COLLINS], for herself, Mr. TALENT, Mrs. HUTCHISON, and Ms. SNOWE, proposes an amendment numbered 757.

Ms. COLLINS. 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:

(Purpose: To amend title 10, United States Code, to restrict bundling of Department of Defense contract requirements that unreasonably disadvantages small businesses)

On page 222, between the matter following line 12 and line 13, insert the following:

SEC. 866. CONSOLIDATION OF CONTRACT REQUIREMENTS.

(a) AMENDMENT TO TITLE 10.—(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2381 the following new section:

"§ 2382. Consolidation of contract requirements: policy and restrictions

''(a) POLICY.—The Secretary of Defense shall require the Secretary of each military department, the head of each Defense Agency, and the head of each Department of Defense Field Activity to ensure that the decisions made by that official regarding consolidation of contract requirements of the department, agency, or field activity, as the case may be, are made with a view to providing small business concerns with appropriate opportunities to participate in Department of Defense procurements as prime contractors and appropriate opportunities to participate in such procurements as subcontractors.

''(b) LIMITATION ON USE OF ACQUISITION STRATEGIES INVOLVING CONSOLIDATION.—(1) An official of a military department, Defense Agency, or Department of Defense Field Activity may not execute an acquisition strategy that includes a consolidation of contract requirements of the military department, agency, or activity with a total value in excess of $5,000,000, unless the senior procurement executive concerned first—

''(A) conducts market research;

''(B) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements; and

''(C) determines that the consolidation is necessary and justified.

''(2) A senior procurement executive may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified for the purposes of paragraph (1) if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under subparagraph (B) of that paragraph. However, savings in administrative or personnel costs alone do not constitute, for such purposes, a sufficient justification for a consolidation of contract requirements in a procurement unless the total amount of the cost savings is expected to be substantial in relation to the total cost of the procurement.

''(3) Benefits considered for the purposes of paragraphs (1) and (2) may include cost and, regardless of whether quantifiable in dollar amounts—

''(A) quality;

''(B) acquisition cycle;

''(C) terms and conditions; and

''(D) any other benefit.

''(c) DEFINITIONS.—In this section:

''(1) The terms 'consolidation of contract requirements' and 'consolidation', with respect to contract requirements of a military department, Defense Agency, or Department of Defense Field Activity, mean a use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy two or more requirements of that department, agency, or activity for goods or services that have previously been provided to, or performed for, that department, agency, or activity under two or more separate contracts smaller in cost than the total cost of the contract for which the offers are solicited.

''(2) The term ''multiple award contract'' means—

''(A) a contract that is entered into by the Administrator of General Services under the multiple award schedule program referred to in section 2302(2)(C) of this title;

''(B) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 2304a through 2304d of this title or sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k); and

''(C) any other indeterminate delivery, indeterminate quantity contract that is entered into by the head of a Federal agency with two or more sources pursuant to the same solicitation.

''(3) The term 'senior procurement executive concerned' means—

''(A) with respect to a military department, the official designated under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) as the senior procurement executive for the military department; or

''(B) with respect to a Defense Agency or a Department of Defense Field Activity, the official so designated for the Department of Defense.

''(4) The term 'small business concern' means a business concern that is determined by the Administrator of the Small Business Administration to be a small-business concern by application of the standards prescribed under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2381 the following new item:

''2382. Consolidation of contract requirements: policy and restrictions.''.

(b) DATA REVIEW.—(1) The Secretary of Defense shall revise the data collection systems of the Department of Defense to ensure that such systems are capable of identifying each procurement that involves a consolidation of contract requirements within the department with a total value in excess of $5,000,000.

(2) The Secretary shall ensure that appropriate officials of the Department of Defense periodically review the information collected pursuant to paragraph (1) in cooperation with the Small Business Administration—

(A) to determine the extent of the consolidation of contract requirements in the Department of Defense; and

(B) to assess the impact of the consolidation of contract requirements on the availability of opportunities for small business concerns to participate in Department of Defense procurements, both as prime contractors and as subcontractors.

(3) In this subsection:

(A) The term ''consolidation of contract requirements'' has the meaning given that term in section 2382(c)(1) of title 10, United States Code, as added by subsection (a).

(B) The term ''small business concern'' means a business concern that is determined by the Administrator of the Small Business Administration to be a small-business concern by application of the standards prescribed under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

(c) APPLICABILITY.—This section applies only with respect to contracts entered into with funds authorized to be appropriated by this Act.

Ms. COLLINS. Mr. President, I ask unanimous consent that the 10 minutes we have been allocated be allocated among the three of us as follows: 3 minutes for the Senator from Maine, 3 minutes for the Senator from Missouri, 3 minutes for the Senator from Texas, and 1 final minute for the Senator from Maine.

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

Ms. COLLINS. I thank the Chair.

Mr. President, our amendment addresses an increasing practice in the Department of Defense to bundle contracts to award a larger contract. The problem with that is it disadvantages smaller companies that cannot bid on a giant contract but would be perfectly able to responsibly perform the work if the contract were broken up into smaller segments.

Contract bundling has become increasingly prevalent in recent years. In fact, it has reached record levels. Contract bundling is up by 19 percent since 1992, and the result of this is the shutout of many small firms from doing business with the Federal Government.

Our amendment would require that the Department of Defense perform rigorous analysis on bundled contracts in excess of $5 million. It would require that alternatives to bundling be considered and that a determination be made that the benefits of bundling the contracts substantially exceed the benefits of identified alternatives.

We have focused on DOD because the Small Business Administration indicates that ''bundling is rooted at the Department of Defense.''

The Collins-Talent-Hutchison-Snowe amendment is necessary because bundling has had an unfortunate effect on the U.S. Government contractor base. According to the Office of Federal Procurement Policy Administrator Angela Styles:

> This issue is a dramatically reduced contractor base, and the mounting lost opportunity cost of choosing among fewer firms with fewer ideas and innovations to deliver products and services at lower prices.

She noted:

> The negative effects of contract bundling over the past 10 years cannot be overestimated. . . . Not only are there fewer small businesses receiving Federal contracts, but the Federal Government is suffering from a smaller supplier base . . . when small businesses are excluded from Federal opportunities through contract bundling, our agencies, small businesses, and taxpayers lose.

That is exactly the case. When contracts are bundled so that only a few large firms can bid on them, the United States does not get as good a deal. The United States Government is not taking advantage of the many innovative small firms that are capable of doing the work for the Federal Government if the contract was awarded in smaller amounts.

This is a matter of making sure we have a healthy industrial base, that we have as many firms competing as vigorously as possible to do work for the Federal Government, and of making sure our smaller companies have a fair shot at competing for Federal contracts. This amendment will make a real difference for our small businesses.

I yield to the Senator from Missouri.

Mr. TALENT. I yield to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I thank Senators COLLINS, TALENT, and SNOWE for bringing up this subject in the Defense bill. I have small business advisory committees in my State and just last week hosted an African American leadership summit. The major complaint these small businesses have is bundling. They would like to have an opportunity to bid, but they are frozen out by this process.

I vowed I would try to help open the door because it is good for small business. Small business is the economic engine of America. That is where the jobs are created and it will be good for taxpayers, as the Senator from Maine has said, to have competition, to have more people working to get into Federal contracting, bringing something different to the table. So this is a very important part of our strong national defense, getting the best deal for taxpayers, but it is also very important that we help our small businesses have access to the biggest contracts that are made in America. Government contracts are the biggest and small businesses have something to offer. Where they are proven and where the 8A program has come in to help our minority-owned businesses get those opportunities, getting the backup they need to be reliable minority contractors, that is what we need in this country.

We need to open that door. The 8A program does open the door and it creates that level playing field that allows them then the platform to get some of the larger contracts.

I appreciate the Senators working with all of us to try to bring about this result. I vowed I would do it. I think if we can do it in the Department of Defense, later we can then use that as a model for all of the Federal agencies in our country. We will do a better job for the taxpayers and we will help the small businesses of this country that are creating the jobs. We want more jobs in our economy. That is the bottom line. It is a win for everyone.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Mr. President, I too thank the Senator from Maine for her advocacy on this issue, not just this year but in past years. I also thank our distinguished chairman and ranking member because I understand they have cleared this amendment and will accept it.

There is not anything more important we can do for small business in a procurement issue than what we are doing with this amendment. I do not think there is very much more we can do that is important to taxpayers and important to quality in defense procurement than this issue.

Bundling is choking small business. It is hurting the taxpayer. It is hurting quality. This amendment is a major step forward to limiting it to cases where it is truly appropriate.

From 1992 through 2001, 44.5 percent of DOD procurement dollars were in bundled contracts and therefore essentially off limits to small business competition. So in each one of those, there were fewer competitors. There was a tendency to have higher price and poorer quality for the taxpayers. And small businesses, which are supposed to have preferences under the statutes, actually were foreclosed from bidding.

The kind of contract I am talking about is this, and this is an engineering contract that was recently let: Indefinite delivery, indefinite quantity. This means whoever wins this contract has to be able to be prepared to provide any or all of the following in indefinite amounts in terms of services at any time the Government wants it: Planning, environmental services, inspections, operations, maintenance, family housing services, relocatable facilities and structures, public works supply management, demolition, architecture, and engineer and task order management.

The Government says, yes, we are very open to small business. You can bid on this if you are a small business. You just have to be able to provide all of that at any time we want it in whatever quantity we need it.

Naturally, small business is cut off. It is hurting the taxpayer. It is hurting the small businesspeople. It has a disproportionately negative impact on minority small business. It needs to be stopped.

The Senator from Maine quoted Angela Styles from the Office of Federal Procurement Policy. It cannot be said better than she said it:

> When small businesses are excluded from Federal opportunities through contract bundling, our agencies, small businesses, and the taxpayers lose.

That is the short of it. I am glad this amendment is evidently going to go into this bill. I hope it stays in in conference. I thank the Senator from Maine for her advocacy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. I thank the Senator from Missouri for his hard work. He has been an advocate for attacking this problem for some time and it has been a pleasure to work with him.

One woman business owner really summed up what this is all about. She said, bundling is a shield that keeps large companies from having to compete with smaller firms.

Such a state of affairs is ultimately unhealthy for the Federal procurement system. We rely on a vigorous competition to keep prices low and to ensure we are purchasing high quality goods and services. This amendment is going to make a difference in our procurement system and a difference for small businesses. For that reason, it has been strongly endorsed by the National Federation of Independent Businesses and the National Black Chamber of Commerce.

I end my remarks by thanking the distinguished chairman of the committee and the ranking member for their cooperation and assistance. I ask for the adoption of the amendment.

Ms. SNOWE. Mr. President, today I rise in support of the contract bundling amendment offered by Senators COLLINS, TALENT, and HUTCHISON. As the new Chair of the Committee on Small Business, I am pleased to join with my colleagues to create a policy specifically for the Department of Defense, DOD, on the issue of contract bundling and to place restrictions on the Department's ability to bundle Government contracts to the detriment of small businesses in this country.

In fiscal year 2001, the Federal Government awarded close to $235 billion in Federal contracts. Yet, small businesses still received less than their fair share. As a result, the Federal Government failed to achieve the goal that we established for Federal agencies to ensure that at least 23 percent of Federal contracts go to small enterprises. Even more troubling is the fact that over the past 10 years, there has been a steady decline in the number of small business contractors receiving new contract awards.

Despite our efforts over the past several years to focus on concrete measures and legislation to increase small business access to the Federal marketplace, we have instead seen a disturbing trend in the opposite direction. America's small businesses are being eroded by the practice of contract bundling by Federal agencies.

In pursuing operational efficiencies, Federal agencies are making contract bundling decisions that block small business access to the opportunity to compete for Federal contracts. According to the Small Business Administration's Office of Advocacy, for every 100 bundled contracts awarded, small businesses lose an average of 60 contracts, and for every $100 awarded on a ''bundled'' contract, there is a $33 decrease to small business. At $109 billion in fiscal year 2001, bundled contracts cost small business $13 billion.

The Small Business Act provides that small firms shall have the maximum practicable opportunity to compete for these valuable Federal contracts. This policy was adopted because it is good for small business, good for the purchasing agencies, and good for the taxpayer who pays the bills.

Small businesses benefit from having access to a stable revenue stream and to a marketplace for new products and services. In turn, these small vendors to the Federal Government contribute to business development, job creation and economic stimulation in our local communities.

Federal agencies also benefit when small businesses participate in the Federal marketplace. Many of the most innovative solutions to our problems—such as new technologies in defense readiness—come from small firms, not large businesses, where complex chains of command, the need to consult with corporate headquarters, and repetitive sign-offs on a new idea that have to be cleared with accounting, human resources, and marketing, can stifle innovation and creativity. The absence of all these obstacles can increase the agility of a small business to deliver new innovative products at lower costs. Agencies trying to carry out their governmental functions can take advantage of these innovations and deliver better quality products and services to our constituents.

Finally, the taxpayer wins when small businesses compete for contracts. Small business means more competition, lower prices and higher quality.

Contract bundling, however, threatens these benefits. To simplify the contracting process, agencies take several smaller contracts and roll them into one massive contract. The result is a contract that a small business could not perform, due to its complexity or its obligation to do work in widely disparate geographic locations. This practice is particularly prevalent at the Department of Defense, which is the Federal Government's largest purchaser of goods and services.

In light of this practice, it comes as little surprise when I hear a small business owner say all too often that ''I could not perform the contract, even if I won it. So I won't even bid.'' When that happens, we all lose.

If small businesses create the majority of new jobs in America, which they do, and they account for half the output of the economy, which they do, then, they clearly deserve every possible chance to compete for the business of the nation's largest consumer—the Federal Government.

For these reasons, I called a hearing 2 months ago in the Small Business Committee to examine the continuing threat of contract bundling to small business and to identify positive, constructive changes to ensure that the Federal Government continues to provide contracting opportunities for small businesses.

The 1997 Small Business Administration reauthorization legislation established a definition of bundling and created an administrative process to review instances of bundling. By its terms, agencies are supposed to make a determination whether a proposed bundle is ''necessary and justified.'' Yet at the March 2003 hearing, witnesses testified that instead of making a good faith effort to determine the costs and benefits of a proposed bundling, Federal agencies, and Defense agencies in particular, have found ways to evade these ''necessary and justified'' determinations by identifying loopholes in the definition of bundling.

As the largest agency in terms of contracting dollars spent, accounting for about two-thirds of the Federal Government's total spending, it is time to hold the Department of Defense accountable for these bundling determinations—to make sure they include small businesses in the Federal procurement process, and to make sure they follow the law.

The amendment offered today provides a first step in our efforts to achieve positive constructive change to ensure the Department of Defense continues to provide contracting opportunities for small business. It closes loopholes and strengthens the bundling definition for the Department of Defense contract requirements. It also requires the Department of Defense to perform rigorous analysis on bundled contracts; to discuss alternative acquisition strategies; and, to make a determination that the benefits of bundling ''substantially exceed'' the benefits of the identified alternatives. This marks a higher level of scrutiny than exists under current law.

I appreciate my colleagues' willingness to work together to establish legislation that counters the effects of contract bundling on small business. And, continuing in the spirit of cooperation, I look forward to building on this very positive language to address the issue more broadly and make this policy governmentwide as we move forward with legislation to reauthorize the Small Business Administration and its programs later this summer.

Mr. KERRY. Mr. President, I applaud the efforts of Senator SUSAN COLLINS,

Senator JIM TALENT, and my colleague from the Small Business and Entrepreneurship Committee, Senator CARL LEVIN, for their efforts today on behalf of small businesses. Their amendment to S. 1050, the Department of Defense reauthorization bill, is a step in the right direction towards ending the deleterious effect contract bundling is having on small businesses.

Bundled contracts, while seemingly an efficient and cost-saving means for Federal agencies to conduct business, are anticompetitive and antismall business. Further, they will result in increased costs over time. When a Federal agency bundles contracts, it limits small businesses' ability to bid for the new bundled contract, thus limiting competition and the Government's ability to receive better and cheaper goods and services. Small businesses are consistently touted as more innovative, more flexible and responsive to an agency's needs than their larger counterparts. But when forced to bid for megacontracts, at times across large geographic areas, few, if any, small businesses can be expected to compete. This deprives the Federal Government of the benefits of competition and our economy of possible innovations brought about by small businesses.

This amendment attempts to close one of the loopholes used by agencies to pool like-kind contracts that were previously awarded to small businesses. The amendment requires the Department of Defense to conduct market research, identify alternative contracting approaches, and determine if the ''consolidation'' is necessary and justified for any ''consolidated contract'' above $5 million.

The amendment does not go far enough, however. It only applies to the Department of Defense, is only applicable for 1 year, and still allows a loophole that will allow bundling regardless of quantifiable dollar amounts. I have introduced legislation, S. 633, that would take the necessary steps to further limit the practice of contract bundling. I look forward to obtaining its Senate passage in cooperation with the Senators who advocated on behalf of this amendment and all those who are determined to remove the barriers to small business development created by contract bundling.

Ms. COLLINS. Mr. President, our amendment addresses a practice known as ''contract bundling,'' which has become increasingly prevalent in recent years. An October 2002 report for the Small Business Administration that measured the trends and impact of bundling over the last decade concluded that: the number and size of bundled contracts issued by federal agencies has reached record levels; small businesses are receiving disproportionately small shares of the work on bundled contracts; although only 8.6 percent of contracts were bundled, bundled contracts accounted for 44.5 percent of the money spent through contracts from 1992–2001; large firms won 67 percent of all prime contract dollars and 75 percent of bundled contract dollars; and small firms won only 18 percent of prime contract dollars and 13 percent of bundled contract dollars.

Moreover, the problem is getting worse. In 2001, 29,000 contracts were bundled government-wide, up eight percent from 2000 and 19 percent since 1992.

Our amendment would require that DOD perform rigorous analysis on bundled contracts in excess of $5 million. It would require that alternatives be considered and that a determination be made that the benefits of bundling ''substantially exceed'' the benefits of the identified alternatives. Savings in administrative or personnel costs alone would not constitute a sufficient justification for consolidation ''unless the total amount of the cost savings is found to be substantial in relation to the total cost of the procurement.''

Our amendment focuses on DOD where, the SBA report notes, ''Bundling is rooted.'' Although bundling rates occur at levels as high or higher at the General Services Administration, Department of Health and Human Services, Social Security Administration, and Treasury, ''the high level of spending by the Army, Navy, Air Force and the Office of the Defense Secretary focus attention on defense contracts as the primary source of bundling.''

This amendment is about more than just allowing small businesses to compete for contracts on a level playing field; it is about preserving our government's contractor base.

According to Office of Federal Procurement Policy Administrator Angela Styles the issue is a dramatically reduced contractor base, which has created a lost opportunity cost caused by choosing among fewer firms with fewer ideas and innovations to deliver products and services at lower prices.

Further, she notes that when small businesses are excluded from federal opportunities through contract bundling everyone, including our agencies, small businesses, and the taxpayers lose.

Our amendment sets in place a higher level of scrutiny than exists under current law and will be a good start in beginning to reverse a problem that has been building up over the last decade. For that reason, small business advocates such as the National Federation of Independent Business and the National Black Chamber of Commerce support it.

This amendment will make a real difference for small business. One small business owner wrote to me in support of my amendment because, she said, bundling had made contracts of the size they could hope to obtain disappear. She had, she wrote, been knocking on the doors at the Department of Defense for years, without any success due to bundling.

Another small business owner wrote to me that bundling had essentially created a monopoly in his line of business. Even small businesses that have a federal preference in contracting under various programs have seen the beneficial effects of the preferences all but wiped out due to bundling. One woman business owner pointed out in a letter to me what bundling truly is: a shield that keeps large companies from having to compete with smaller firms.

Such a state of affairs is ultimately unhealthy for a federal procurement system that relies primarily upon vigorous competition to keep prices low and the quality of goods and services high.

I am pleased that our amendment has received the support of the distinguished chairman and ranking member, and that it will become part of the defense bill the Senate passes today or tomorrow.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I likewise encourage the adoption of the amendment. I think it is cleared on both sides. I commend the sponsors of this amendment for their hard work.

The PRESIDING OFFICER. The time has expired on the amendment.

Mr. LEVIN. I ask unanimous consent that I be permitted to proceed for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Michigan.

Mr. LEVIN. Mr. President, I will indicate our strong support for this amendment. A few years ago, we actually made an effort to get this amendment, or something very close to it, adopted. In fact, it was in our bill. It went to conference, where we ran into a real roadblock.

We are going to give it a go again. In addition to the usual suspects, we have the two Senators from Maine and Missouri who will be with us in conference, and I am very hopeful that this time, with their support, we will be able to get it over the goal line with the House, because that is where the impediment was a few years ago.

It is an important amendment. I very much support it. In fact, I ask unanimous consent that I be listed as a cosponsor to the amendment.

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

Mr. LEVIN. I note that Senator KERRY has been working very hard in this area. I want to make that clear for the record, because of his strong interest and support for this approach.

Again, I very much thank the Senator from Maine and the Senator from Missouri for their strong initiative in this area.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the Collins-Talent amendment.

The amendment (No. 757) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. WARNER. Under the order, my understanding is now we go to the amendment of the Senator from North Dakota, with 90 minutes equally divided.

AMENDMENT NO. 750

Mr. DORGAN. The amendment numbered 750 is at the desk for consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 750.

Mr. DORGAN. 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:

(Purpose: To prohibit the use of funds for a nuclear earth penetrator weapon)

At the end of subtitle B of title XXXI, add the following:

SEC. 3135. PROHIBITION ON USE OF FUNDS FOR NUCLEAR EARTH PENETRATOR WEAPON.

(a) IN GENERAL.—Effective as of the date of the enactment of this Act, no funds authorized to be appropriated or otherwise made available for the Department of Energy by this Act or any other Act may be obligated or expended for development, testing, or engineering on a nuclear earth penetrator weapon.

(b) PROHIBITION ON USE OF FISCAL YEAR 2004 FUNDS FOR FEASIBILITY STUDY.—No funds authorized to be appropriated or otherwise made available for the Department of Energy for fiscal year 2004 by this Act or any other Act may be obligated or expended for a feasibility study on a nuclear earth penetrator weapon.

Mr. DORGAN. Mr. President, we are debating the question of whether this country ought to begin developing new nuclear weapons, an important debate, as about important a debate we will have in this Senate in a while. The press gallery is empty because this is not some sex scandal. It does not have sensational aspects to it. It is not a murder investigation. It is about whether this country ought to decide now to begin producing additional nuclear weapons.

I regret this is not debated and reported as a major national initiative so that the American people can be part of this discussion in our democracy. But it is not. I feel very strongly that where we are headed at the moment is in the wrong direction.

I told my colleagues before about a fellow from North Dakota I have always kind of enjoyed watching. He is called the flying farmer from Makoti. Some have heard me tell about it. The flying farmer from Makoti, a guy in a small town of 80 people, Makoti, ND, who drives a car, goes to county fairs and builds himself a ramp and jumps over cars, kind of a dare devil. His name is John Smith. He is actually in the Guiness Book of Records because he drove a car in reverse 500 miles averaging 36 anywhere. That is the claim to fame of the flying farmer from Makoti.

I think to myself, he has nothing over the Senate, especially on this issue. We are fixing to go in reverse a good long ways, with pretty aggressive speed, on the issue of nuclear policy.

We have had in this country an understanding that with respect to nuclear weapons, we have them as a deterrent. We do not have them to use; we have them as a deterrent. We now have people walking around this town engaged in policy discussions, talking about ''usable'' nuclear weapons. Nuclear weapons? It is just another weapon. In fact, let's talk about not just nuclear weapons, let's talk about low-yield nuclear weapons. Programs, they say, are mininuclear weapons or micronuclear weapons, usable nuclear weapons. Let's do designer nuclear weapons, they say. Let's now build a new nuclear weapon as a bunker buster nuclear weapon. I have no idea what they are thinking about.

In the paper today we have statements in this debate. We have to go ahead and develop new nuclear weapons because we do not want to tie the hands of our military. If we would not allow additional nuclear weapons to be developed, we would be the only country in the world that cannot produce new nuclear weapons. What on Earth are we thinking about?

Here is the nuclear stockpile for those who cannot sleep at night. There are some apparently who cannot sleep because we do not have enough nuclear weapons. I want to give you a sedative. We have roughly 30,000 nuclear weapons in the world—roughly. No one knows exactly, but these are the best estimates. North Korea, we think, has two or three. Pakistan has some, India has some, United Kingdom has more than a few, Israel, France, China, the United States, 10,600 nuclear weapons—we think, strategic and theater nuclear weapons—and Russia, 18,600 nuclear weapons.

Now, I mentioned yesterday that about a year and a half ago following September 11 there was a threat. Our intelligence community assessed a threat against this country. The threat was that someone has to have stolen a nuclear weapon from the Russian arsenal. Terrorists had stolen a nuclear weapon from the Russian arsenal and was preparing to detonate that nuclear weapon in this country in either New York or Washington, DC. The intelligence threat picked up, deemed perhaps credible, who knew, and so for a period of time it did not hit the press. For a period of time there was a seizure that terrorists might have a nuclear weapon, might detonate it in the middle of an American city. And then we are not talking 3,000 deaths, we are talking hundreds of thousands of deaths. It was determined a couple of months later that was not a credible threat, and we moved on.

But interestingly enough, the lesson from it was that it was perfectly plausible, to most, that a weapon could have been stolen in Russia, and it was plausible that a terrorist having stolen a nuclear weapon in Russia could have detonated it, had the capability to detonate it. Perfectly plausible.

We have discussed before the command and control of these nuclear weapons in Russia. We know they do not have the safeguards we would like. We know there are three-ring binders with hand notations about inventories of nuclear weapons; 30,000 of them exist in this world. We had a seizure about one being stolen, one being stolen and everyone is greatly concerned, as they should be.

So today we come to the Senate with a bill that says the following: We are not strong enough. We are not secure enough. We are worried about our future. What we need to do is build more nuclear weapons. We need to build low-yield nuclear weapons.

What is a low-yield nuclear weapon? That is one-third the size of the one in Hiroshima. And we need to do bunker buster nuclear weapons, earth penetrating bunker buster nuclear weapons. That is my amendment. It strikes the $11 million in this bill, prevents the opportunity to continue a design, a development, or manufacturer of bunker busting nuclear weapons, development testing, engineering, no funds authorized for feasibility study on the nuclear earth penetrator weapon.

So the question for the Senate in this amendment is very simple. Do you think you cannot sleep at night because we do not have enough nuclear weapons and the only way you will get a good night's rest is if you can build an earth penetrator bunker buster nuclear weapon?

Is that what you think? If so, then vote against my amendment. Katy bar the door. Let's develop another nuclear weapon. We are saying to the rest of the world with this nonsense, we have the right of preemption. We will now renounce the doctrine of first use. We believe there are ''usable'' nuclear weapons, and we need to build low-yield nuclear weapons—new ones. We reserve the right to build nuclear weapons despite the fact that we have had a moratorium for a decade. We believe we ought to have a bunker buster nuclear weapon. You know what the message is to India, to Pakistan, and to other countries that want nuclear weapons: That this country doesn't think we ought to prevent the spread of nuclear weapons, or that we ought to prevent the use of nuclear weapons but that we need to bulk up and build new ones, and that we believe they are potentially usable in some future conflict.

That is exactly the wrong message this country ought to be sending to anybody in the rest of the world. What we ought to be telling the rest of the world is we have 10,600, roughly, nuclear weapons and the means to deliver them as a deterrent against anyone who would threaten our liberty.

We don't need more. To build more is simply a green light to every other country in the world that wants to become part of the nuclear community.

I come from a State that understands defense. I support a strong defense. My votes in the Congress will show that. I support a very strong, robust defense system in this country. We have two air bases in the State of North Dakota. One is for K–135 tankers, and the other has both the Minuteman Missile with Mark 12–A warheads, as well as B–52 bombers.

Some have said that if the State of North Dakota seceded from the Union, it would be the third most powerful country in the world.

I know a little something about this. I have seen a nuclear weapon close up. I have studied what they do and what the impact of nuclear weapons are. I have tried to understand deterrent capability.

All of us know that with a world full of nuclear weapons we have been very blessed that we have not had a war with nuclear weapons. All of us know that. As I said yesterday, I have kept in my desk for some long while pieces of material that remind us that the proper approach to dealing with this threat is the approach we have used under Nunn-Lugar and other arms control and arms reduction treaties. This is a piece of metal taken from the shaft of an S–24 missile that had a warhead aimed at the United States. Where that missile was buried in the Soviet Union are now sunflowers. There is no missile. The warhead is gone. There are sunflowers at the place.

How that happened is we paid for the destruction of that missile. We didn't shoot it down. We destroyed it with American taxpayer dollars under arms control agreements.

This is copper metal from a ground-up Russian submarine. We didn't sink the submarine. We destroyed it under Nunn-Lugar and arms control reduction. We paid to have the submarine destroyed.

I also have a metal piece in my desk from a wing flap from a Soviet bomber. We didn't shoot it down. We paid to have the wing sawed off, and that bomber was destroyed with arms reductions and arms control money from Nunn-Lugar.

The fact is we know what succeeds. We know what has reduced tensions and reduced delivery systems. Yet we are told today that America will only be safer in this new day and in this new age of terrorism if we begin building new types of nuclear weapons. We are told by people in positions of significant responsibility in this town with policy roles and responsibility that it is not unthinkable for us to talk about ''usable'' nuclear weapons. In fact, such discussions have occurred in the pages of our Nation's major newspapers with respect to both Afghanistan and Iraq.

Let me talk for a moment about the so-called bunker buster or earth penetrator nuclear weapons. This is about whether we should begin the research in this new weapon. They are talking about a bunker buster. I assume they are talking bunker busters because of Afghanistan. I went to Afghanistan. I flew over the mountains where deep in the caves of Afghanistan this twisted, sick, demented murderer named Osama bin Laden with his people plotted the murder of innocent Americans. I understand. They have caves there. I understand it was not easy for us to deal with those caves.

The result is that we have people saying we need an earth penetrating bunker buster nuclear weapon. They are talking the size of a bunker buster up to nearly 70 times larger than Hiroshima. Hiroshima was 15 kilotons.

It seems to me that if you build a 1-megaton nuclear weapon as a bunker buster you are going to bust a whole lot more than a bunker. I am guessing you bust a mountain, you bust the territory for miles and miles and miles around, and you bust any living creature. So I don't know. If the bigger the explosion, the safer we are, the more security we have, then be my guest; I guess this would be your weapon. But the question at this moment in time, at this intersection in America history is, Is this what we want to do?

If today the trucks are moving in North Korea taking spent fuel rods from the nuclear plant, if today those trucks are moving in a way that takes that material to be produced in a nuclear weapon to be sold to terrorists, in a way that has a nuclear weapon showing up 14 months from now in a major American city, is our first responsibility in the Congress and in this country to say what we really need are more nuclear weapons? We have 10,600. Is that really our response? Or ought we decide that there are bigger issues and more important issues for us to be talking about with North Korea and the rest of the world?

Those issues include stopping the spread of nuclear weapons now. I mean stopping the spread now. We have so many countries and so many groups that want access to nuclear weapons. Our job is to be the world leader. We are the superpower. We have the largest economic engine in the world, and we are the military superpower in the world. We, unfortunately or fortunately, have the responsibility and the mantle on our shoulders to stop the spread of nuclear weapons. It is on our watch. It is our job. It is not someone else's job.

How do we stop the spread of nuclear weapons and decide to send the signal to the rest of the world that nuclear weapons cannot be used in this world of ours? Once you start moving nuclear weapons back and forth in anger, this Earth as we know it is gone.

Those people who talk about ''survivable'' nuclear weapons are nuts, just nuts. They still think about tank wars. You have 200 tanks; we have 100 tanks. Then we have a battle. Who has how many tanks remaining? Or if we have 200 and you have 100, that is not the way nuclear war will exist on the face of this Earth.

The only opportunity we have for our children and grandchildren is to prevent the use of nuclear weapons—not to talk about the use of nuclear weapons, which some are now doing. It is in their minds practical to talk about this new day and new age of threat security issues, and to talk about the potential of use of nuclear weapons.

It is interesting to me that in the middle of all of this discussion—even in this bill—I mentioned yesterday that we are going to have $9 billion in this bill for a national missile defense system to intercept an ICBM sent to us by either a rogue state or a terrorist.

First, terrorists and rogue states aren't going to get ICBMs. It is very unlikely. Their delivery of choice is going to be in a container on a tanker ship. It is not going to come in at 18,000 miles an hour. It will come in at 3 miles an hour to a dock in a major American city.

The lowest threat on the threat meter in this country we are spending the most money on is national defense, and the highest threat has the least expenditure. Regrettably, that is the appetite for these programs in the Senate. But when you talk about threat, the threat, it seems to me, is that this country will decide that it makes a U-turn on public policy here with respect to nuclear policy and decide it says to the rest of the world, here is a green light. The green light is to build additional nuclear weapons. We want to build so-called low-yield nuclear weapons, which is an oxymoron. There is no such thing as a low-yield nuclear weapon. We want to build them. Guess what Russia will be saying. We want to build some, too, then. There you go. We want to build earth penetrator bunker buster nuclear weapons. So will others. So we spark a new arms race. Instead of reducing the number of nuclear weapons and making this world a safer place, we will increase the number of nuclear weapons and will actually have other countries understanding that it is our country that talks about the potential use of nuclear weapons in future conflicts.

I think this is the most Byzantine thing I have witnessed in all the years I have served in the Congress. I do not have the foggiest idea how this is not met with the reaction by the American people: What on Earth could you be thinking about? Or aren't you thinking at all? I just do not understand it.

I likely will lose this amendment. It is a small amendment. The amendment deals with a relatively small amount of money but a critically important principle. I am just trying to take one piece out of this bill, the piece that says: Let's start the research to move toward an earth penetrating bunker buster nuclear weapon. Let's just start. Let's just take the first step.

I am saying: Let's not.

If you cannot sleep at night because we have 10,600 nuclear weapons, you are

not going to sleep better at night because you have a bunker buster high-yield jumbo buster nuclear weapon. That is not going to make you sleep better. Take some sleeping pills.

Mr. WARNER. Will the Senator yield for a question on my time?

Mr. DORGAN. I am happy to yield.

Mr. WARNER. I listened very carefully to your statements. You say let's see if we can't stop taking the first step. Am I correct in that?

Mr. DORGAN. That is correct.

Mr. WARNER. Am I not correct, last year the Congress of the United States spoke to that issue and took that first step and initiated that program? The first step has been taken.

Mr. DORGAN. I am sorry, I do not understand your question. Would you rephrase the question.

Mr. WARNER. Last year the Congress in the military authorization bill took the first step on this program, and put money in the bill. The research has already commenced.

I think the point of reference, to be accurate, I would say to my good friend—you are not taking the first step. In other words, this program is ongoing. In this bill are simply the funds to continue what the Congress authorized last year after debate and vote.

Mr. DORGAN. For purposes of the Senator from Virginia, giving him comfort, let me say my amendment will end the second step. If his point is the research for the bunker buster nuclear weapon was last year a first step, then let me suggest to you my amendment will withhold the money so we do not take the second step.

However, I think the larger point the Senator from Virginia understands. The step this country wants to take, to say there are usable nuclear weapons, that there are designer nuclear weapons that can be produced with lower and higher yields for special kinds of uses is a very dangerous step and exactly the wrong step for those of us who believe our leadership responsibility is both to stop the spread of nuclear weapons and to reduce the number of nuclear weapons. I think the larger point the Senator from Virginia understands. But if he is more comfortable with my saying we will stop the second step rather than the first step, we will stop whatever steps are taken in the wrong direction, in my judgment.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I just think accuracy on these very important subjects is absolutely vital to establish credibility among our colleagues. I read from the report language. It says:

> This amount includes $21 million for advanced concepts, of which $15 million is authorized to continue the feasibility study on the robust nuclear earth penetrator.

So the Senator was incorrect in his representation that he was endeavoring as if to say I am going to stop it now before it gets started. I think that is fair, to let the Congress know, and particularly the Senate, this thing was authorized last year and voted upon, approved, funded. This is a second tranche of funds for research.

Essentially the amendment of the Senator is to establish a total ban on this entire program.

If I may say on my own time, of course, it is the intention of the Senator from Virginia, again in total fairness to our colleagues, to incorporate in this legislation, in this bill, a provision which is identical in purpose to the one we just voted on, the Warner amendment. It will say: The Secretary of Energy may not commence the engineering development phase, that's the next phase, or any subsequent phase of the nuclear earth penetrator program unless specifically authorized by Congress.

So into this legislation—it had been my intent to put it on in the second degree, but the time agreement understandably precluded that. It may well be other Senators will join us. But this is the intention of the Senator from Virginia. I wish to represent to all colleagues I will endeavor, and I have every reason to believe there is going to be support on the other side, to incorporate this language which will put Congress entirely in control of this program, entirely in control, just as I amended the previous legislation to put Congress entirely in control of every step as it goes along.

Mr. DORGAN. If I may use the word credibility, as the Senator from Virginia did, let me say to those who might listen to this debate or watch this debate, it is incredible to believe Congress will be in charge of every step of the development of this program. That is preposterous. That is not the case on any defense system of which I am aware.

My amendment is very simple, I say to the Senator from Virginia. My amendment prohibits the use of these funds. You did not talk about prohibiting funds. You want to fund it. You want to authorize it. You want to move ahead with it. That is fine. We have a disagreement about that. But there is no credibility issue here.

The question is whether this country wants, with this legislation, to say to the rest of the world, By the way, we have embarked on a new venture here and with this new venture, whether it is last year or this year, it is decided we need new nuclear weapons including bunker busting nuclear weapons.

If the answer to that is yes, that's what we want to do, then the answer is we vote with my colleague from Virginia. If you believe it is moving in exactly the wrong direction, it is driving 500 miles in reverse like the flying farmer from Makoti, if you really believe this is stepping backward, as I do, and dangerous for the rest of the world, you vote no. You vote to strip the money.

Look, money is money, as you know. This $11 million, $15 million is probably not a lot of money to some. But my amendment strips that money to say let's stop this. We do not need earth penetrating bunker busting nuclear weapons. Does the Senator from Virginia believe at this moment we can't sleep because we don't have bunker busting earth penetrating nuclear weapons?

Mr. WARNER. The distinguished chairman of the subcommittee is here. I asked him to address the strategic implications and the necessity. The Chairman of the Joint Chiefs just yesterday, when I was consulting with him, said there is now a proliferation of effort by nations which have interests antithetical to ours, going deep into the ground to establish facilities to manufacture poison weapons, biological weapons, gas weapons, and possibly nuclear weapons. I think it is prudent that our arsenal of defense deterrence have in it weapons, if I may finish, both nuclear and conventional.

Mind you, there is an ongoing effort parallel to this one to determine whether or not we can achieve the same strategic goals of destruction of deep underground facilities with conventional weapons, which would certainly be used prior to the use of any nuclear weapon. So it is a parallel program of conventional and nuclear.

But I respect my colleague whose views are different than mine. His amendment bans forever this type of weapon—research, development, everything. It stops it cold.

Mr. DORGAN. I am sorry, if the Senator wants to talk about credibility, let me correct the Senator, if you do not mind. On page 2 of my amendment it prohibits it for the year 2004, because that's all I can do, with respect to 2004.

Mr. WARNER. That is correct.

Mr. DORGAN. And for the year 2004 it says: No funds authorized or appropriated or otherwise made available, et cetera, for a feasibility study.

Mr. WARNER. Which study was authorized, I say to my colleague, last year.

Mr. DORGAN. Let me finish my point. If we are going to be completely accurate here.

The PRESIDING OFFICER. The Senator will suspend. The Chair will advise the Senator from North Dakota has the floor. All conversations are being charged against his time.

Mr. WARNER. Mr. President, I think I said when I took the floor, it would be charged to the Senator from Virginia. It is in the nature of a colloquy which takes place, so statements on my behalf are charged against my time, statements by the Senator from North Dakota on his time.

Mr. DORGAN. That was my understanding.

The PRESIDING OFFICER. Without objection, the time will be so charged.

Mr. DORGAN. Let me just make this point because I think it is important. I, too, want to be accurate. I want to be accurate on my side and your side. My amendment prohibits the use of funds

for the earth penetrator weapon to be ''obligated or expended for development, testing, or engineering on a nuclear earth penetrator weapon.'' That is perpetual. And ''(b) Prohibition on Use of Fiscal Year 2004 Funds'' deals only with this fiscal year.

So to be perfectly accurate, the question of the withholding of funds with respect to the feasibility study only applies to this fiscal year. It is not permanently banning that funding because I can only ban it for this year. So I just want to make that point.

I am happy to yield and happy to engage in this colloquy, but I think the issue is quite simple actually: Either one believes we ought to have new nuclear weapons, earth penetrating bunker busters—and I don't remember exactly who showed up to testify yesterday; someone from the Joint Chiefs, I guess, and they have told us that somewhere around the world, somebody is auguring deep into the earth, God forbid, and we might well need a nuclear weapon to go get them.

I would say to people who come around here with those stories: Go get some fresh air. Put some sugar on your cereal. I don't, for the life of me—there are people around here, I swear to you, who, if told our adversaries were creating a cavalry, would be on the floor trying to buy horses. I don't understand this notion that there is a rumor that somebody is doing something, so let's create a new nuclear weapon.

The reason I offer this specific amendment, I say to the Senator from Virginia, is that I know they talked about this in Afghanistan, in Iraq. And they talked about the issue of ''usable'' nuclear weapons. They talked about the difficulty in caves. I have flown over those mountains. I have seen those mountains and the caves. But for us to come back here and say: Oh, by the way, our new global strategy is to create a new class of nuclear weapons—I think that has profound implications with respect to the stability and the spread of nuclear weapons around the world.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I readily state you have one position on the concept of whether this Nation should, you said, start up—but I think you agree with me now, it is ongoing—so stop where it is, this program. You make your point. I make my point.

What I am trying to do is to clarify, for the benefit of our colleagues, precisely what I understand your amendment does. What this Senator, or perhaps joined by others, intends to do is, namely, make the effect of the amendment parallel to what we have done three times now. Three times this body has voted not to ban research on a nuclear system. You are asking for a ban.

I draw your attention to your first sentence: ''Effective as of the date of the enactment of this Act, no funds authorized to be appropriated or otherwise made available for the Department of Energy by this Act or any other Act may be obligated or expended for development, testing,'' and so forth.

Does that not capture the existing funds that were appropriated last year?

Mr. DORGAN. No, it does not.

First of all, read the last words, ''development, testing, or engineering,'' and then compare that to (b) in which I am talking about the feasibility study. I am withholding the funds from the feasibility study. I was attempting to make that distinction for you.

Mr. WARNER. But if your amendment would pass, wouldn't it be the effect to the Department of Defense: Why waste last year's money if you are prohibited from spending another nickel?

Mr. DORGAN. I am all for that statement: Why waste money? I am all for that. If the proposition is, what I am trying to do is tell the Defense Department, don't waste money, then sign me up and count me in.

Mr. WARNER. I think we have clarified this situation as best we can. But I wish to state to my colleagues, it is the intention of this Senator—I hope to be joined by others; and, indeed, one on the other side of the aisle—to put in legislation, as a part of the consideration of this subject of the penetrator, the exact language we had and voted on very strongly here just 15 minutes ago.

Mr. DORGAN. I have deep respect for my colleague from Virginia. We are friends. We disagree on this issue.

Let me make a final point. I know others want to speak on this matter. We are now in a new environment in which the language about the nuclear threat has changed dramatically. We have people who say we really need to begin nuclear testing once again. We have people who say we ought not forswear the first use of nuclear weapons; first use might in some circumstances be perfectly plausible. We have some who say nuclear weapons are ''usable'' as tactical issues, as strategic issues on the battlefield, they are usable nuclear weapons we ought to be considering. There are people who say we need new kinds of nuclear weapons—bigger ones, the jumbo ones, which is the earth penetrator, and smaller ones, the smaller, mininuclear weapons that would be one-third the size of Hiroshima, which certainly is not mini, but that is what they say.

We have people saying all these things in this country, some of them in very responsible policy positions. I think the rest of the world sees all that, listens to that, looks at bills such as this, and says: You know what, the United States has 10,600 nuclear weapons in its arsenal. And they say they need more? And they say they have a right to use them? They will not renounce first use.

They say they want specific, more designer kinds of weapons for battlefield use.

They are saying: You know, the United States has changed. It used to be the United States did everything conceivable in its power to say: Never shall a nuclear weapon be used. Our nuclear weapons are deterrents, deterrents so they never can be used against us and never used against others. But now it has all changed, and there are people who think it is perfectly plausible, it is just another weapons program, just part of our weapons system.

Well, in 2003, with what is happening around the world—terrorists, India, Pakistan, North Korea—I cannot think of a more destructive piece of public policy than to continue with this kind of nonsense. It is not just wrong, it is dangerously wrong, in my judgment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Mr. President, may I just have 3 minutes from the Senator from North Dakota?

Mr. DORGAN. I am happy to yield the time to the Senator.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. LEVIN. Mr. President, I support the amendment offered by the Senator from North Dakota. I think for the reasons he gives, we should not walk down a road which tells both our people and the rest of the world that we are going to consider the development of what was called the bunker buster, which, as a matter of fact, is from 28 to 70 times the size of the Hiroshima bomb.

What we decided last year was we would put a fence around the first year's study and we would get, indeed, a report before that money was spent. It is a report which is totally unsatisfactory.

So there was a lot of doubt—a lot of doubt—in this body about whether we should proceed down a road which considers the utilization of nuclear weapons in new forms that are 28 to 70 times the size of Hiroshima.

Now we are also told, this morning, that now there may be some chemical and biological sites that could be underground for which these weapons would be used.

Well, first of all, conventional weapons are perfectly adequate to close entrances and holes. But putting that aside for a minute, just think about it. The intelligence community said they had identified 590 suspect sites in Iraq—590 sites, according to Secretary Rumsfeld. Now, that used to be a classified number, but apparently the other day it was just declassified by Secretary Rumsfeld, so I will use that number. The intelligence community said 590 sites over there in Iraq are suspect chemical and biological weapons sites.

We are going to drop a nuclear weapon on those sites based on the intelligence of the CIA? Are we kidding? Do we know what we are dealing with when we are talking about nuclear weapons 28 to 70 times the size of Hiroshima? Those are the weapons being considered for modification for the so-called bunker buster. They are not

bunker busters. These are world peace destroyers. These are city destroyers. These are nation destroyers.

For us to casually—and I think it is casual—talk about, ''Let's go down this road, we are not talking about development here, we are only talking about research,'' we have the person who is the top person in the Defense Department as the adviser to the Secretary of Defense on nuclear matters, Fred Celec, who says, ''If a hydrogen bomb could be successfully designed to survive a crash through hard rock, it will ultimately get fielded.''

Now, that is not one of the supporters of the Dorgan amendment who is saying that. That is the top adviser to the Secretary of Defense who is saying: If we can show that it will work, and design it, it will be fielded.

The rest of the world does not ignore what we do here. What we are doing here is marching down a road which is dangerous and reckless in terms of world peace and security. And we should not do it.

This is not just simply a study. This is a step—a very important step—down a road, in a direction which, apparently, according to Fred Celec, who is the Deputy Assistant Security of Defense for Nuclear Matters, will be ultimately fielded.

I support the amendment of the Senator from North Dakota. I do point out that there was a fence around last year's money. It was not as though last year we decided to proceed. There were some conditions which were attached. As far as I am concerned, when you read that report, it is very unsatisfactory, very general, and not at all sufficient to justify moving to the next $15 million.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, that fence was met. The Department submitted its report. On receipt of that report, the program, as authorized last year, commenced. It is an ongoing program.

Mr. LEVIN. The Senator is correct. But it is important to point out that there was so much concern about step 1, there was a fence or a condition attached to the expenditure of the money. It is incumbent upon all of us to read the report and ask, does that satisfy us that we ought to take the next step?

Mr. WARNER. Mr. President, the use of fences is quite common in a number of areas in the Defense authorization process.

Mr. LEVIN. It is, indeed.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. Twenty-seven minutes.

Mr. ALLARD. Mr. President, I rise in opposition to the Dorgan amendment. Before I make any more comments, right at the very start, I want to make one thing clear: We are not building new nuclear weapons. We are modifying existing nuclear weapons. Somehow the other side is trying to imply that we are building new nuclear weapons, and we are going to continue to add to the number of nuclear warheads we have. We are continuing to reduce the number of nuclear warheads under the Moscow Treaty.

The Senate bill includes an authorization of $15 million to continue a 3-year feasibility study on the robust nuclear penetrator. I repeat, to continue the feasibility study. This is not a new issue for the Congress to consider. In the National Defense Authorization Act for fiscal year 2003, the Congress authorized $15 million for the first year of the feasibility study on the robust nuclear earth penetrator which is now under way.

This bill authorizes only the continuation of the feasibility study. It does not authorize the production or deployment of such a capability.

The RNEP for feasibility—referring to the robust nuclear earth penetrator—will determine if one of two existing nuclear weapons can be modified to penetrate into hard rock in order to destroy a deeply buried target. That is the challenge we face. Our potential enemies are trying to avoid any vulnerability to targets by going deeper and deeper underground. In order to destroy deeply buried targets that could be hiding weapons of mass destruction or command and control assets, this new technology needs to be an option, not that we are necessarily going to use it.

The Department of Energy has modified nuclear weapons in the past to modernize their safety, security, and reliability aspects. We also modify existing nuclear weapons to meet new military requirements. The B–61–11, one of the nuclear weapons being considered for the RNEP feasibility study, was also modified once before to serve as an earth penetrator to hold specific targets at risk. At that time, the modification was to ensure the B–61 would penetrate frozen soils. The RNEP feasibility study is attempting to determine if the same B–61 or another weapon—for example, the B–83—can be modified to penetrate hard rock or reinforced, underground facilities. Authorizing research on both options, nuclear and conventional—and we hope we will never have to use the nuclear; we hope we can continue to advance the conventional technology so that would be the preferred method of choice to go after these deep underground hardened targets—for attacking such targets is a responsible step for our country to take

Again, we are not producing new nuclear weapons. We are doing a modification. It is a continuing modification. We have modified the B–61 before. We are looking at the B–83 to see if perhaps we can't do a modification on that.

The sponsor of the amendment made the comment that the United States is setting an example for the rest of the world. We are continuing to set the example for the rest of the world by reducing the number of nuclear warheads. The problem is countries such as Afghanistan and Pakistan don't care what we are doing. Despite our best efforts to set an example, they are continuing to develop nuclear warheads. They are doing more than we are today as far as the triggering mechanism for nuclear warheads. If that continues, where will that put us as far as the defense of this country is concerned?

I commend President Bush. He has taken the lead in reducing the number of nuclear warheads. It is great that we are able, through these kind of programs, to take covert silos, as my friend from North Dakota mentioned, and we are planting sunflower seeds. We are still doing that today as a result of the Moscow Treaty. Even before the treaty, the President announced that he would take down the Peacekeeper which is buried in silos in Wyoming, Nebraska, and Colorado. That effort is moving forward. We are continuing to do that. The point is, we need to have some flexibility. Times are changing. Our targets are changing. We need to have new technology. We need to study. That is what this provides, a feasibility study of these various options. We simply cannot afford to be caught shorthanded. Too much is at risk. America is at risk.

ADM James Ellis, Commander of U.S. Strategic Command, confirmed in testimony before the Strategic Forces Subcommittee, on April 8, 2003, that not all hardened and deeply buried targets can be destroyed by conventional weapons. That is his view. Many nations are increasingly developing these hardened, deeply buried targets to protect command and communications and weapons of mass destruction production and storage assets. It is prudent to authorize the study of potential capabilities to address this growing category of threat.

What the Senate bill authorizes is simply the second year of the 3-year feasibility study and nothing more. Should the National Nuclear Security Administration determine through this study that the robust nuclear earth penetrator can meet the requirement to hold a hardened and deeply buried target at risk, NNSA still could not proceed to full-scale weapons development, production, or deployment without an authorization and appropriation from Congress.

We do the study. Say the study says there is a feasible alternative. Still they cannot move forward until they have the authorization for development and production through authorization and appropriation from the Congress.

We should allow our weapons experts to determine if the robust nuclear earth penetrator could destroy hardened and deeply buried targets to assess what would be collateral damage associated with such a capability. Then Congress would have the information it

would need to decide whether development of such a weapon is appropriate and necessary to maintain our Nation's security.

I urge my colleagues to join me in opposing the Dorgan amendment as it now stands. This is an important issue. We are talking about the defense of this country. A lot is at stake. I think we need to keep in mind that despite the fact we are doing a lot today to reduce the number of nuclear weapons in our arsenal, other countries are continuing to test. I put in the RECORD yesterday a whole page of tests that have occurred since we quit testing underground. Other countries are continuing to develop their weapons. We need to continue to use our technology to make sure we have the proper defenses and the wherewithal to protect our troops in the field, to protect America, and to protect freedom.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER (Ms. MURKOWSKI). Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Madam 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. 750, AS MODIFIED

Mr. DORGAN. Madam President, I have sent a modification to the desk, a technical modification. I ask to have the modification agreed to.

Mr. ALLARD. There is no objection on this side.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment (No. 750), as modified, is as follows:

(Purpose: To prohibit the use of funds for a nuclear earth penetrator weapon)

At the end of subtitle B of title XXXI, add the following:

SEC. 3135. PROHIBITION ON USE OF FUNDS FOR NUCLEAR EARTH PENETRATOR WEAPON.

(a) IN GENERAL.—Effective as of the date of the enactment of this Act, no funds authorized to be appropriated or otherwise made available for the Department of Energy by this Act may be obligated or expended for development, testing, or engineering on a nuclear earth penetrator weapon.

(b) PROHIBITION ON USE OF FISCAL YEAR 2004 FUNDS FOR FEASIBILITY STUDY.—No funds authorized to be appropriated or otherwise made available for the Department of Energy for fiscal year 2004 by this Act may be obligated or expended for a feasibility study on a nuclear earth penetrator weapon.

Mr. KENNEDY. Madam President, I urge the Senate to support this amendment to strike funding for nuclear bunker busters. What sense does it make for the Nation to do all it can to prevent the proliferation of nuclear weapons, and then start proliferating them ourselves?

''More has changed on proliferation than on any other issue.'' CIA Director George Tenet made this statement not too long ago to the Senate Armed Services Committee. He wasn't talking about the United States but he should have been. As we have seen already in this debate, the Bush administration's policy would make the United States the biggest nuclear weapons proliferator of all. They want to ''nuclearize'' as many of our conventional weapons as possible.

But nuclear weapons are different. The unique destructive power of these weapons gives them the capacity to threaten the very survival of humanity. That is why nuclear weapons have always been kept separate from other weapons as part of our strong commitment to do all we can to see that they are never used again. Only in the most dire circumstances should the use of nuclear weapons be considered—only if the very survival of our Nation is threatened.

It makes no sense to break down the firewall we have always maintained between nuclear weapons and other weapons. This policy has worked for over half a century in preventing nuclear war. Other nations have complied with the basic principle, too. A nuclear weapon is not just another item in our Nation's arsenal. We don't need to start building mini-nukes when our state-of-the-art, high-tech conventional weapons can do the same job. And we don't need to go nuclear with our conventional bunker buster weapons, either.

I was 13 years old on that fateful day in August 1945, when a B–29 bomber flying high over Hiroshima dropped the first nuclear weapon, ''Little Boy.'' More than 4 square miles of the city were instantly and completely devastated. Over 90,000 people died instantly. Another 50,000 died by the end of that year. Three days later, another B–29 dropped ''Fat Man'' over Nagasaki, killing 39,000 people instantly and injuring 25,000 more.

Since then, no nuclear weapon has ever been used in any war. There have been close calls in the past half century but this weapon was never used. In 1948, the Soviet Union began the Berlin Blockade, and we considered the use of tactical nuclear weapons if the conflict escalated. We also considered the use of nuclear weapons in the Korean war. In 1957, the Soviets launched Sputink, and it became clear that two oceans could not protect us from a nuclear attack at home.

In 1958, President Eisenhower declared a moratorium on all nuclear testing—with the understanding that the Soviet Union would also honor the moratorium. But testing resumed in 1961, and after negotiations with the Soviet Union, we issued a Joint Statement of Agreed Principles for Disarmament Negotiations—the so-called McCloy-Zorin accords—which outlines a program for general and complete disarmament.

In the work of the Cuban missile crisis, President Kennedy pushed forcefully for a treaty to limit the development of nuclear weapons. The result was in the Partial Nuclear Test Ban Treaty in August 1963, prohibiting tests of nuclear weapons in the atmosphere.

In February 1967, a treaty prohibited nuclear weapons in Latin America.

In July 1968, the Treaty on the Non-Proliferation of Nuclear Weapons was signed in Moscow, London, and Washington, and entered into full force in March 1970. That same year brought the beginning of the first round of Strategic Arms Limitation Talks in Vienna. The SALT agreement was signed 2 years later in 1972 and placed restrictions on the number and size of nuclear warheads in the Soviet and American arsenals.

In the 1970s, we made further progress in limiting the threat of nuclear war. The Senate approved treaties to prohibit the placement of nuclear weapons in the ocean and to limit underground testing. We almost reached an agreement on the second round of Strategic Arms Limitation Talks, or SALT II, but the Soviet invasion of Afghanistan in 1970 took that agreement off the table.

In 1987, the Soviet Union and the United States signed the Intermediate Range Nuclear Forces Treaty. In 1991, using pens made from melted down missiles, President Bush and President Gorbachev signed the Strategic Arms Reduction Treaty START I.

Six months later both nations committed to further nuclear program reductions and eliminations. Soviet leader Gorbachev initiated a moratorium on nuclear testing in October 1991, and President Bush canceled the Midgetman Missile Program and stopped production of advanced cruise missiles in January 1992. That summer, the Senate voted for a 9-month moratorium on nuclear weapons testing beginning in October 1992, with a final cutoff of all testing by September 1996.

In 1993, Presidents Bush and Yeltsin signed START II, reducing U.S. and Soviet arsenals of longer range nuclear weapons and eliminating all land-based missiles with multiple warheads over the next 10 years.

After we finalized this testing moratorium, France and China stopped testing, and Russia continued its own moratorium. But now, after many difficult years of this progress toward preventing nuclear war, the Bush administration wants to change direction and go the other way. Last year, it requested $15.5 million to study the feasibility of adding a nuclear bunker buster to our arsenal. They say they need it to destroy hardened and deeply buried targets, and they want $15 million more this year to continue the project.

They say they need it to destroy hardened targets buried deeply underground, but the scientific community has raised serious questions about the effectiveness and need for these weapons. A nuclear explosion in a bunker could spew tons of radioactive waste into the atmosphere. Obviously, trying

to develop nuclear weapons for this mission distracts from developing conventional alternatives to do the job.

According to Dr. Sidney Drell, of Stanford University: Currently, we don't have the capability of digging down more than 50 feet to reach deeply buried hardened targets. If we detonate just 1 kiloton between 20 and 50 feet down, a million cubic feet of dirt would have radioactive contamination, and a crater the size of the crater at the World Trade Center would be created.

Imagine what would happen if one of these weapons was a nuclear weapon with a yield of 400 kilotons and was detonated. Is it even possible to imagine a crater 400 time the size?

It makes no sense to start down this road. No country should be making weapons like that. It is wrong for this administration to start developing new types of nuclear weapons that have no plausible military purpose and that can only encourage even more nations to go nuclear.

Mrs. BOXER. Madam President, I am very concerned that the fiscal year 2004 Defense Authorization Act provide $15 million of funding for the continued study into the feasibility of developing a robust nuclear earth penetrator.

The robust nuclear earth penetrator is a bomb designed to bury itself deep into the ground before it explodes. This is not a low-yield nuclear weapon. According to reports, this weapon would be five times more powerful than the device detonated at Hiroshima—and would have an even greater impact because a nuclear weapon's force is multiplied when its shock wave penetrates the crust of the Earth.

The aim of those who support this research into the robust nuclear earth penetrator believe that a usable nuclear weapon will be able to destroy deeply buried targets with few casualties and little fallout. Unfortunately, science is not on their side.

Last year, a number of scientists, including Sidney Drell of the Stanford Linear Accelerator Center wrote, ''an earth-penetrating warhead with a yield sufficient to destroy a buried target cannot penetrate deeply enough to fully contain the nuclear explosion; it would necessarily produce an intense and deadly radioactive fallout. Thus, it is not technically possible to use nuclear weapons to destroy deeply buried targets without at the same time causing significant radioactive contamination and collateral damage if used in an urban area.''

Another argument pushed by those in favor of these nuclear weapons is that they would be useful in destroying stockpiles of biological and chemical weapons.

While a nuclear weapon could, in fact, incinerate biological and chemical weapons if the nuclear blast is nearby, it is unlikely that we will ever have perfect intelligence about the location of these weapons. Our continued inability to find weapons of mass destruction in Iraq is a perfect illustration.

In addition, the Union of Concerned Scientists points out that the robust nuclear earth penetrator could actually disperse biological and chemical weapons by spreading them into the resulting crater and surrounding air. These weapons are not usable weapons.

Finally, our continued development of new uses for nuclear weapons will only spurn other nations to do the same.

As Rose Gottemoeller, the former Deputy Secretary of Energy, has said, ''I think people abroad will interpret this as part of a really enthusiastic effort by the Bush administration to renuclearize. And I think definitely there's going to be an impetus to the development of nuclear weapons around the world.''

The war in Iraq showed our Nation has overwhelming superiority when it comes to conventional forces. It doesn't make any sense to promote the development of nuclear weapons and signal to the world that weapons of mass destruction have other uses other than a means of last resort.

I urge the passage of the Dorgan amendment.

Mr. ALLARD. Madam President, I ask unanimous consent that we vote at 12:30 relative to the Dorgan amendment; that our time be equally divided between both sides; and that after the vote, Senator BYRD be allowed to speak for 20 minutes.

Mr. WARNER. Is this a UC request?

Mr. ALLARD. It is my understanding Senator REID discussed this with the chairman and it was agreed that Senator BYRD would have an opportunity to speak for 20 minutes after the vote.

Mr. WARNER. That's correct. If I may add a word or two to this. In the course of my colloquy with the Senator from North Dakota, it was indicated there would be an effort to place in this bill language comparable to what was in the amendment that was voted on immediately prior to this one to give a consistency in the manner in which we are treating these very serious questions. So I will put this on the desk and I will represent to our colleagues that this language will be forthcoming and a part of this bill.

Mr. REID. Reserving the right to object, that doesn't mean we are going to have two votes, or does it?

Mr. WARNER. I have indicated to the ranking member that this language, I think, could be voice-voted because I think there is consensus on both sides in an effort to make parallel and to put the Congress clearly into play.

Mr. REID. Madam President, it is also my understanding that Senator LAUTENBERG would be willing to offer an amendment following the statement of the Senator from West Virginia. He also indicated he would agree to a time limit.

Mr. WARNER. We are prepared to enter into that now.

Mr. REID. I haven't had a chance to talk about the time with him. I just wanted to alert people of that. Shortly after Senator LAUTENBERG offers his amendment, there would be a vote.

Mr. WARNER. It is my hope that in the course of Senator BYRD's 20 minutes, if that decision could be made, Senator BYRD would certainly understand the need to maintain the momentum.

Mr. ALLARD. Madam President, I renew my request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DORGAN. Madam President, let me conclude with a few comments and indicate, as I should have, that Senator FEINSTEIN of California, Senator BYRD, and Senator BINGAMAN are all cosponsors of my amendment. Let me conclude by saying I understand there is a difference of opinion about what defending America really is. I don't think it is defending our interests or providing greater national security to be involved in the creation of new nuclear weapons.

I believe the best way to defend our country, especially in a new day and age of terrorism, is to understand we must find ways to prevent terrorists from ever acquiring nuclear weapons, for they surely will use them. We saw what they did with a low-tech weapon, with jet airplanes full of fuel. That was a low-tech weapon.

The ability to acquire nuclear weapons will be a devastating consequence, especially for us in the United States, because terrorists will surely want to use them. It seems to me our job is to stop the spread of nuclear weapons, do everything conceivably possible to stop the spread of nuclear weapons and provide no green lights, no go signs for anybody in the world to believe that we think it is acceptable for the use of nuclear weapons; that we believe nuclear weapons are ''usable'' in battlefield circumstances; that we believe we ought to build additional nuclear weapons, understanding that others will as well. If we want to do low yield, they will also want to. If we want to do penetrating bunker busters, they will want to do them.

Our job, it seems to me, is to say the only success we will be able to claim in the future is that we prevented the spread of nuclear weapons and prevented their use and, over a long period of time, began to reduce the number of nuclear weapons.

Thirty thousand nuclear weapons exist on this earth. The detonation of one will represent the greatest calamity, or potentially represent the greatest calamity in the history of the world. The detonation of one relatively small nuclear weapon in the middle of a major American city could likely cause hundreds of thousands of deaths.

This is a big issue. This is very important. I think people walking around this town talking about usable nuclear weapons, beginning to test nuclear weapons once again, building new designer nuclear weapons, is a terrible mistake. It is sending a signal to the

rest of the world that nuclear weapons are like other weapons. They are not. They are not like other weapons. The only value of a nuclear weapon for us has been as a deterrent to prevent others from using them.

We must, it seems to me, from this day forward, with the world populated by 30,000 nuclear weapons, find a way to keep them out of the hands of the wrong people, to stop the proliferation, and to begin to reduce their number. That ultimately represents our security. That is the way to defend this country: to stop the spread of nuclear weapons, not to build more.

I suspect we will see on this amendment, as we have on the previous amendments, that I will come up short on the vote. I regret that very much. I so strongly believe this country is sending a terrible signal to the rest of the world—Russia, China, Pakistan, India, you name it. I think this is a dreadful mistake. It does not strengthen this country. In my judgment, it makes this country more vulnerable in the long term.

Let me finish as I started. I have been the strongest supporter of this country's system of defense. I voted for the Defense bills. I worked on weapons systems. I think this country needs a robust, strong defense. I have always felt that way. I come from a State with two military airbases and the best Air National Guard in the country. I understand B–52s, KC–135 tankers, and Minuteman missiles.

I support a strong, robust defense. Nuclear weapons are different. They are different. They threaten the very existence of the world as we know it, and that is why it must be dealt with differently. That is why I offer this amendment.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

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

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. 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. WARNER. Madam President, I move to table the Dorgan amendment and ask for the yeas and nays.

The PRESIDING OFFICER. That motion is not in order while time remains for debate.

Mr. WARNER. I yield back the time on our side. It is my understanding they will be yielding back time on their side.

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

Mr. WARNER. All time having been yielded back, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Mr. WARNER. I move to table the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion. The clerk will call the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay''.

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

The result was announced—yeas 56, nays 41, as follows:

[Rollcall Vote No. 189 Leg.]

YEAS—56

Alexander	Dole	Miller
Allard	Domenici	Murkowski
Allen	Ensign	Nelson (FL)
Bayh	Enzi	Nelson (NE)
Bennett	Fitzgerald	Nickles
Bond	Frist	Roberts
Breaux	Graham (SC)	Santorum
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burns	Hagel	Smith
Campbell	Hatch	Snowe
Chambliss	Hutchison	Specter
Cochran	Inhofe	Stevens
Coleman	Kyl	Sununu
Collins	Lieberman	Talent
Cornyn	Lott	Thomas
Craig	Lugar	Voinovich
Crapo	McCain	Warner
DeWine	McConnell	

NAYS—41

Akaka	Dodd	Leahy
Baucus	Dorgan	Levin
Biden	Durbin	Lincoln
Bingaman	Feingold	Mikulski
Boxer	Feinstein	Murray
Byrd	Harkin	Pryor
Cantwell	Hollings	Reed
Carper	Inouye	Reid
Chafee	Jeffords	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Kohl	Stabenow
Daschle	Landrieu	Wyden
Dayton	Lautenberg	

NOT VOTING—3

Edwards	Graham (FL)	Kerry

The motion was agreed to.

Mr. WARNER. Madam President, we will consult with the proponent of the underlying amendment. But for the moment, the Senate has tabled this matter.

It is my hope we could proceed to the Nelson amendments. I thank our distinguished colleague from Florida for his cooperation. We can do both by voice vote, it is my hope.

On the one amendment, I would like to be associated with you because I represented throughout the vote, to my side, that the language be incorporated. I yield the floor.

The PRESIDING OFFICER. At this time there is a previous order to recognize the Senator from West Virginia.

The Senator from Nevada.

Mr. REID. Madam President, we have spoken to the Senator from West Virginia. He has no objection to the two managers of the bill disposing of the two Nelson amendments.

If I could just be heard briefly? We have several people on our side who want to offer amendments. I hope those people who want to offer amendments would contact the two managers of the bill. We are running out of names of people to offer amendments. Both leaders have indicated they want to complete this bill as quickly as possible. We are not going to be able to work late into the night tonight.

Mr. WARNER. Madam President, if I could bring some new information on that subject? The majority leader had a conversation with me just a minute ago. I have not had a chance to share it.

I intend to stay here, as will other Members on my side, tonight. The majority leader is open to having votes, if necessary, at about 9:30 tonight.

Mr. REID. Madam President, this is an excuse so he doesn't have to go to this dinner.

Mr. WARNER. As we say in the law, I plead nolo contendere.

Mr. LEVIN. What dinner would we also be missing?

Mr. REID. We are not invited.

Mr. LEVIN. We are not invited.

Mr. REID. I would say then there is a possibility we could complete this legislation tonight.

Mr. WARNER. If we get the cooperation and Senators call—we are right here on the floor—and indicate that you desire to have an amendment, we will see if we can accept it. If we cannot, we will proceed to put it in line.

I say to the leadership that we are going to hear from the distinguished senior Senator from West Virginia. Following that, I know of one amendment on this side by Senator HUTCHISON, the Senator from Texas. And we have the amendment by the Senator from New Jersey.

Is that my understanding?

Mr. LEVIN. That is correct.

Mr. WARNER. Could we put those in order now, but maybe not lock them in?

Mr. REID. That would be good, if Senator HUTCHISON could go first before Senator LAUTENBERG.

Mr. WARNER. I think I can make those arrangements.

Mr. REID. How long will she take?

Mr. WARNER. Fifteen minutes, or less. We may be able to accept it without requiring a vote.

Mr. REID. Senator LAUTENBERG would be 1:45, and he will take one-half hour. He probably will not use the whole one-half hour. I would be happy to ask unanimous consent that Senator HUTCHISON from Texas be allowed to offer her amendment, followed by the Senator from New Jersey.

Mr. WARNER. I am agreeable to that unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. If the Senator will yield, I have an amendment on which I will not take much time, if I could just have 15 minutes. I do not know if it will be accepted or not. I ask for 15 minutes.

Mr. WARNER. How soon would the Senator be willing to share the text of the amendment with the managers?

Mr. HARKIN. Right now.

Mr. LEVIN. Will the Senator be able to go immediately after the disposition of the Lautenberg amendment, which would be about 2 o'clock, or 1:30 or 2?

Mr. HARKIN. Yes. Around 1:30. Yes, I can do that.

Mr. LEVIN. It may be later than 2.

Mr. REID. He is not going to start until quarter to 2.

Mr. LEVIN. It would be about 2:30 or quarter to 3. Would the Senator from Iowa be able to do it in that time period?

Mr. HARKIN. I will make time to do it.

Mr. WARNER. We thank the Senator from Iowa for that cooperation because, frankly, we don't know of many more amendments. We are nearing the end.

Mr. REID. Following Senator LAUTENBERG, could I modify my request for him to be next in order?

Mr. WARNER. There is no objection on this side.

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

Mr. WARNER. I appreciate the patience of the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Madam President, I thank the two leaders of our committee who have been so accommodating and so gracious to work this out.

AMENDMENT NO. 766

Mr. NELSON of Florida. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. NELSON], for himself and Mr. WARNER, and Mr. LEVIN, proposes an amendment numbered 766.

Mr. NELSON of Florida. Madam 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:

(Purpose: To require a specific authorization of Congress for the commencement of the engineering development phase or subsequent phase of a Robust Nuclear Earth Penetrator)

At the end of subtitle B of title XXXI, add the following:

SEC. 3135. REQUIREMENT FOR SPECIFIC AUTHORIZATION OF CONGRESS FOR COMMENCEMENT OF ENGINEERING DEVELOPMENT PHASE OR SUBSEQUENT PHASE OF ROBUST NUCLEAR EARTH PENETRATOR.

The Secretary of Energy may not commence the engineering development phase (phase 6.3) of the nuclear weapons development process, or any subsequent phase, of a Robust Nuclear Earth Penetrator weapon unless specifically authorized by Congress.

Mr. NELSON of Florida. Madam President, this amendment brings symmetry to the bill by our action earlier this morning. Senator WARNER had an amendment agreed to which said the Congress should authorize the production of a low-yield nuclear weapon. In other words, the Congress was going to have to step in if we were going to make a major step in the production of a new nuclear weapon from our present policy of years standing and of not producing any new kinds of nuclear weapons. That was agreed to earlier with regard to a low-yield nuclear weapon under the philosophy recognizing that the United States is trying to keep proliferation of nuclear weapons down, and that once you start letting that nuclear genie out of the bottle, it is very hard to reverse. That was the theory upon which the earlier amendment was agreed to.

So, too, the amendment I sent to the desk, cosponsored by the two leaders of our committee, will require the Congress to authorize any production of a robust nuclear earth penetrator. A nuclear weapon would have to be modified to go into this new robust earth penetrator. That is a decision reserved to the Congress and its authorization for such a weapon to go from the research stage to the production stage.

I urge adoption of the amendment.

Mr. WARNER. Madam President, I join in this amendment. It had been my intention to add the second-degree amendment to the amendment we just voted on. I so indicated to my colleagues on this side, recognizing I think it is a benefit for the amendment to originate by our distinguished colleague and member of the committee from Florida on this side of the aisle. This makes ''parallel'' almost to the exact word treatment of both of these initiatives with regard to nuclear weapons in the current 2004 authorization bill.

I commend the Senator. I urge its adoption.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I very much support this effort on the part of the Senator from Florida. It is a very precise, straightforward, and short amendment. The language has great meaning. The Secretary of Energy is not allowed, under this language, to commence the engineering development phase of a robust nuclear earth penetrator without specific authority of the Congress. Each word has meaning. There are not a lot of words in this amendment. It is one of the shortest amendments we have seen around here. But every single word in that amendment has meaning.

I thank not just my good friend from Florida but also the Senator from Virginia because they have really made a constructive contribution to this entire debate by supporting this approach. It is not as strong as some of us would have liked, but it nonetheless is very clear and very specific and says you may not proceed to engineering development unless Congress specifically authorizes that action. It is a significant improvement of the bill.

Mr. WARNER. Madam President, the modesty of my distinguished colleague sometimes is overwhelming. The concept of this language which he described and written in the King's English originated with him in the course of the markup of our bill. I then plagiarized it for the purpose of earlier legislation. I don't know whether the Senator from Florida has plagiarized it. But we owe him a great debt. I am so glad we had the early discussion today about the clarity of certain statutes and that the Senator recognized this one speaks with great clarity. That is why it prevailed on our side.

I urge its adoption.

Mr. LEVIN. I thank the Senator for his generosity. His mind works extremely clearly and extremely quickly. However, the good Senator from Florida deserves much of the credit because he has been taking the lead in a whole lot of these areas. I thank both of them.

The PRESIDING OFFICER (Mr. CHAMBLISS). Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 766) was agreed.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Florida.

AMENDMENT NO. 767

Mr. NELSON of Florida. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. NELSON], for himself and Mr. WARNER, and Mr. LEVIN, proposes an amendment numbered 767.

Mr. NELSON of Florida. 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:

(Purpose: To require a study on the application of technology from the Robust Nuclear Earth Penetrator Program to conventional hard and deeply buried target weapons development programs)

At the appropriate place in Title XXXI in the bill add the following new section:

SEC.—

(a) FINDINGS.—Much of the work that will be carried out by the Secretary of Energy in the feasibility study for the Robust Nuclear Earth Penetrator will have applicability to a nuclear or a conventional earth penetrator, but the Department of Energy does not have responsibility for development of conventional earth penetrator or other conventional programs for hard and deeply buried targets.

(b) PLAN.—The Secretary of Energy and the Secretary of Defense shall develop, submit to Congress three months after the date of enactment of this act, and implement, a

plan to coordinate the Robust Nuclear Earth Penetrator feasibility study at the Department of Energy with the ongoing conventional hard and deeply buried weapons development programs at the Department of Defense. This plan shall ensure that over the course of the feasibility study for the Robust Nuclear Earth Penetrator the ongoing results of the work of the DOE, with application to the DOD programs, is shared with and integrated into the DOD programs.

Mr. NELSON of Florida. Mr. President, basically we have in the authorization bill the ability to conduct this study that has been ongoing for the last year and a half about the robust nuclear earth penetrator. There is a certain sum of money in the underlying bill that allows the conduct of that study to continue.

What we raised in the committee was the fact that a robust earth penetrator may well be in the interest of the United States, that it contain a conventional weapon as opposed to a nuclear weapon. So the attempt of this amendment is to clarify that the research that will be conducted by the Department of Energy, with regard to the modification of a nuclear weapon that would go in the earth penetrator, that the research will be coordinated with the Department of Defense in their conduct and research of an earth penetrator that includes a conventional weapon.

I urge adoption of the amendment, Mr. President.

The PRESIDING OFFICER. Is there further debate?

Mr. WARNER. Mr. President, I wish to endorse the amendment because it has a very sound predicate, a very sound philosophy; namely, that we should do everything possible to channel all of our scientific efforts toward not using a nuclear weapon, and this does just that.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I very much support the amendment for the reasons given by the Senator from Virginia. I commend our good friend from Florida for his initiative.

The PRESIDING OFFICER. Is there any further debate?

There being none, the question is on agreeing to the amendment.

The amendment (No. 767) was agreed to.

Mr. LEVIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, we thank our colleague from West Virginia. He has shown us the usual senatorial courtesy to allow the managers to move timely amendments.

The distinguished Senator from West Virginia is recognized now for a period of 20 minutes. I thank him very much.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the two managers of the bill, Mr. WARNER and Mr. LEVIN, for the very professional, highly dignified manner in which they have conducted their work on this bill. I thank them for the many hours they spend in the committee, which they so ably chair and act within as ranking member.

Mr. WARNER. Mr. President, could I just say, I appreciate the expression of those remarks by our senior colleague. Senator LEVIN and I are in our 25th year—that is a quarter of a century—in the Senate. Throughout that period of time, the Senator from West Virginia has been a tutor, and we have learned much. To the extent we may have progressed in our learnings, it is owing in part to his teachings. I thank the distinguished Senator from West Virginia.

Mr. BYRD. Mr. President, I am deeply grateful for those unmerited and highly charitable remarks from the distinguished Senator from Virginia.

Mr. LEVIN. Mr. President, I hate to interrupt our dear friend and mentor from West Virginia but I must do so just to tell him that those remarks of our dear friend from Virginia were merited, indeed.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Michigan.

IRAQ

Mr. President:

Truth, crushed to earth, shall rise again,
The eternal years of God are hers;
But Error, wounded, writhes in pain,
And dies among his worshippers.''

Truth has a way of asserting itself despite all attempts to obscure it. Distortion only serves to derail it for a time. No matter to what lengths we humans may go to obfuscate facts or delude our fellows, truth has a way of squeezing out through the cracks, eventually.

But the danger is that at some point it may no longer matter. The danger is that damage is done before the truth is widely recognized and realized. The reality is that, sometimes, it is easier to ignore uncomfortable facts and go along with whatever distortion is currently in vogue. We see a lot of this today in politics. I see a lot of it—more than I ever would have believed—right on this Senate floor.

Regarding the situation in Iraq, it appears to this Senator that the American people may have been lured into accepting the unprovoked invasion of a sovereign nation, in violation of longstanding international law, under false premises.

There is ample evidence that the horrific events of September 11 have been carefully manipulated to switch public focus from Osama bin Laden and al-Qaida who masterminded the September 11 attacks, to Saddam Hussein who did not. The run up to our invasion of Iraq featured the President and members of his Cabinet invoking every frightening image that they could conjure, from mushroom clouds, to buried caches of germ warfare, to drones poised to deliver germ laden death in our major cities. We were treated to a heavy dose of overstatement concerning Saddam Hussein's direct threat to our freedoms. The tactic was guaranteed to provoke a sure reaction from a nation still suffering from a combination of post traumatic stress and justifiable anger after the attacks of 9/11. It was the exploitation of fear. It was a placebo for the anger.

Since the war's end, every subsequent revelation which has seemed to refute the previous dire claims of the Bush administration has been brushed aside. Instead of addressing the contradictory evidence, the White House deftly changes the subject. No weapons of mass destruction have yet turned up, but we are told that they will in time. And perhaps they yet will. But, our costly and destructive bunker busting attack on Iraq seems to have proven, in the main, precisely the opposite of what we were told was the urgent reason to go in. It seems also to have, for the present, verified the assertions of Hans Blix and the inspection team that he led, which President Bush and company so derided. As Blix always said, a lot of time will be needed to find such weapons, if they do, indeed, exist. Meanwhile bin Laden is still on the loose out there somewhere and Saddam Hussein has come up missing.

The administration assured the U.S. public and the world, over and over and over again, that an attack was necessary to protect our people and the world from terrorism. It assiduously worked to alarm the public and to blur the faces of Saddam Hussein and Osama bin Laden until they virtually became one.

What has become painfully clear in the aftermath of war is that Iraq was no immediate threat to the United States, and many of us here said so before the war. Ravaged by years of sanctions, Iraq did not even lift an airplane against us. Saddam Hussein could not even get an airplane off the ground. Iraq's threatening death-dealing fleet of unmanned drones about which we heard so much morphed into one prototype made of plywood and string. Their missiles proved to be outdated and of limited range. Their army was quickly overwhelmed by our technology and our well trained troops.

Presently our loyal military personnel continue their mission of diligently searching for weapons of mass destruction. They have so far turned up only fertilizer, vacuum cleaners, conventional weapons, and the occasional buried swimming pool. They are misused on such a mission and they continue to be at grave risk. I am talking about the sons and daughters of the American people. The Bush team's extensive hype of WMD in Iraq as justification for a preemptive invasion has become more than embarrassing. It has raised serious questions about prevarication and the reckless use of power. Were our troops needlessly put at risk? Were countless Iraqi civilians—women, children—killed and

maimed when war was not really necessary? Was the American public deliberately misled? Was the world?

What makes me cringe even more is the continued claim that we are ''liberators.'' Vice President CHENEY, 3 days before the war, said we will be welcomed as liberators. The facts don't seem to support the label we have so euphemistically attached to ourselves. True, we have unseated a brutal, despicable despot, but ''liberation'' implies the followup of freedom, self-determination and a better life for the common people of the invaded country. In fact, if the situation in Iraq is the result of ''liberation,'' we may have set the cause of freedom back 200 years.

Despite our high-blown claims of a better life for the Iraqi people, water is scarce, and often foul; electricity is a sometime thing; food is in short supply; hospitals are stacked with the wounded and maimed. Historic treasures of the region and of the Iraqi people have been looted, and nuclear material may have been disseminated to heaven knows where, while U.S. troops, on orders, looked on and guarded the oil supply. That is what they were told to do.

Meanwhile, lucrative contracts to rebuild Iraq's infrastructure and refurbish its oil industry are awarded to administration cronies, without benefit of competitive bidding, and the United States steadfastly resists offers of U.N. assistance to participate. Is there any wonder that the real motives of the U.S. Government are the subject of worldwide speculation and mistrust?

And in what may be the most damaging development, the U.S. appears to be pushing off Iraq's clamor for self-government. Jay Garner has been summarily replaced, and it is becoming all too clear that the smiling face of the U.S. as liberator is quickly assuming the scowl of an occupier. The image of the boot on the throat has replaced the beckoning hand of freedom. Chaos and rioting only exacerbate that image, as U.S. soldiers try to sustain order in a land ravaged by poverty and disease. ''Regime change'' in Iraq has so far meant anarchy, curbed only by an occupying military force and a U.S. administrative presence that is evasive about if and when it intends to depart.

Democracy and freedom cannot be force fed at the point of an occupier's gun. To think otherwise is folly. One has to stop and ponder. How could we have been so impossibly naive? How could we expect to easily plant a clone of U.S. culture, values, and government in a country so riven with religious, territorial, and tribal rivalries, so suspicious of U.S. motives, and so at odds with the galloping materialism which drives the western-style economies?

As so many warned this administration before it launched its misguided war on Iraq, there is evidence that our crackdown in Iraq is likely to convince 1,000 new bin Ladens to plan other horrors of the type we have seen in the past several days. Instead of damaging the terrorists, we have given them new fuel for their fury. We did not complete our mission in Afghanistan because we were so eager to attack Iraq. Now it appears that al-Qaida is back with a vengeance. We have returned to orange alert in the U.S., and we may well have destabilized the Mideast region, a region we have never fully understood. We have alienated friends around the globe with our dissembling and our haughty insistence on punishing former friends who may not see things quite our way. The path of diplomacy and reason have gone out the window to be replaced by force, unilateralism, and punishment for transgressions. I read most recently with amazement our harsh castigation of Turkey, our longtime friend and strategic ally. It is astonishing that our Government is berating the new Turkish government for conducting its affairs in accordance with its own Constitution and its democratic institutions.

Indeed, we may have sparked a new international arms race as countries move ahead to develop WMD as a last ditch attempt to ward off a possible preemptive strike from a newly belligerent U.S. bully which claims the right to hit where and when it wants. In fact, there is little to constrain this President. This Congress, in what will go down in history as its most unfortunate and spineless and thoughtless act, gave away its power to declare war for the foreseeable future and empowered this President to wage war at will, and not only this President, but also future Presidents.

The amendment that I offered to sunset this nefarious handover of power was rejected by the Senate and garnered only 31 votes. I was amazed, and I am still amazed, that this Senate would reject an amendment to sunset a thoughtless, nefarious, spineless act on the part of this same Senate to hand over this power to declare war to this President. I cannot believe that the Senate did that. Even now, I cannot believe it. It is abhorrent that the Senate would have rejected the sunset provision. So, as it is, there is no sunset. That power goes on after this President. The next President will have the same power, unless Congress steps in and changes the law. Of course, a President can veto a change in the law and that veto, as students of the Constitution will know, will require a two-thirds vote to override. It is hard to believe that grown, sensible men and women would reject that sunset provision—to say nothing of having voted to shift this power over to any President, whether he is a Democrat or Republican.

As if that were not bad enough, members of Congress are reluctant to ask questions which are begging to be asked. How long will we occupy Iraq? We have already heard disputes on the numbers of troops that will be needed to retain order. What is the truth? How costly will the occupation and the reconstruction be? No one has given a straight answer. How will we afford this long-term, massive commitment, fight terrorism at home, address the serious crisis in domestic health care, afford behemoth military spending, and give away billions in tax cuts amidst a deficit which has climbed to over $340 billion for this year alone? If the President's tax cut passes, it will be $400 billion. We cower in the shadows while false statements proliferate. We accept soft answers and shaky explanations because to demand the truth is hard, or unpopular, or may be politically costly.

But I contend that, through it all, the people know. The American people, unfortunately, are used to political shading, political spin, and the usual chicanery they hear from public officials. They patiently tolerate it up to a point. But there is a line. It may seem to be drawn in invisible ink for a time, but eventually it will appear in dark colors tinged with anger. When it comes to shedding American blood, and when it comes to wreaking havoc on civilians, on innocent women, men, and children, callous dissembling is not acceptable. Nothing is worth that kind of lie—not oil, not revenge, not reelection, not somebody's grand pipe dream of a democratic domino theory.

Mark my words, the calculated intimidation which we see so often of late by the ''powers that be'' will only keep the loyal opposition quiet for just so long because, eventually, like it always does, the truth will emerge. And when it does, this house of cards, built of deceit, will fall!

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I commend my colleagues who serve on the Senate Armed Services Committee and their staffs for the superb work done on the bill before us today. The bill comes to the floor of the Senate at an important time in our Nation's history. We have been at war for the past 20 months, ever since the devastating attacks on September 11, 2001 brought the violence of terrorism to our own country. We have come far since then, but we have much farther to go.

Our first goal in the war on terrorism was to topple the brutal Taliban regime in Afghanistan, to destroy the camps where the al-Qaida terrorists who attacked us trained. We have done that. Our Nation's military, the finest in the world, successfully led that charge.

Today we see in Afghanistan the beginnings of a democracy. We will continue to help in the future to make sure that order is kept in Afghanistan and that it will be a part of the flourishing world community.

Our second goal was to disarm the dangerous regime of Saddam Hussein in Iraq before he could surface and use weapons of mass destruction once more against innocent civilians. We have done that. Again, our brave men and women in uniform successfully

achieved that important goal in an astounding 3 weeks. It was a charge that was lightning fast in its speed and thunderous in its conclusion. Now we are working with other nations and world bodies to guide the Iraqi people toward stability. In our quest to unearth Saddam Hussein's weapons of mass destruction, we are digging up mass graves of thousands of innocent people whom Saddam Hussein put to death for opposing him.

Mr. President, we may not have found the weapons of mass destruction yet, but we have found horrifying mass graves that show the world the grim importance of our success in Operation Iraqi Freedom.

The bill before us provides our brave soldiers, sailors, airmen, marines, and their families with the important tools they need to continue the vital work they are doing.

Whether they are active duty or reservists or members of the National Guard, they are the ones who must continue the global fight against terrorism and against nations ruled by despots who develop or possess weapons of mass destruction.

I commend my colleagues for authorizing a military pay raise in this bill that provides a 3.7-percent across-the-board increase and for an additional raise targeted for experienced midcareer personnel, ranging from 5.25 to 6.25 percent.

I commend the committee for establishing incentive pay in the amount of $100 per month for service members who are serving in the Republic of Korea. One need look no further than the news headlines on any given day to appreciate the stability our presence has on the Korean peninsula to keep in check the totalitarian regime in North Korea.

I am also glad to see this bill increase family separation pay from $100 to $225 per month and increased pay for imminent danger or hostile fire from $150 to $225 per month. This is not enough, and anyone listening or who will read this will say it is not enough. It is not. But it is one more thing we can do to show people who are making these sacrifices that we want to compensate them in every way we possibly can for a debt we know we will never really be able to repay.

I was also pleased the committee agreed to continue the development of the Joint Strike Fighter aircraft in the amount of $4.4 billion. There is no question the Joint Strike Fighter is the fighter of the future, and it will keep America preeminent in defenses for whenever we may need them in whatever place and in whatever way.

I also thank my colleagues on the committee for including the Bipartisan Commission on the Review of the Overseas Military Structure of the United States. That is a long way of saying that we are going to look at foreign bases, as well as American bases, as we are making the transition for our Department of Defense into the security assessment that we face today.

This is a bill I introduced with Senator DIANNE FEINSTEIN of California. I am the chairman of the Military Construction Subcommittee of the Appropriations Committee. Senator FEINSTEIN is the ranking member. In looking at military construction, as we have, and the issues facing us with military construction for American bases versus foreign bases, it occurred to us that the Department of Defense is in a huge transition now, trying to assess the threats we have and the different kinds of threats we have been seeing since 9/11, and we have not kept up in military construction requests.

As we have seen in Afghanistan and Iraq, the cold war concept guiding the overseas basing for the U.S. military is obsolete. Yet the number, structure, and scope of our overseas bases is still largely alive with the threat of Soviet aggression. The process of when, how, and why we base troops abroad is in need of a thorough examination to assure that our basing structure is adequate for the new security environment. This legislation will assess every overseas installation.

During the cold war, our primary military mission was to defend our Nation and our allies from the symmetric Soviet threat of aggression, and ''boots on the ground'' in Europe and Asia allowed us to do that. Even though the cold war has been over for a decade, our Nation still has 112,000 troops in Europe, 37,000 in Korea, and 45,000 in Japan, largely in installations designed, devised, and intended for the threats of an earlier era.

Training constraints are evident on many of these bases. The threats we face today are asymmetrical. They are terrorist groups or rogue states gaining weapons of mass destruction. Events of the past decade, especially since 9/11, have taught us that we not only need to maintain a military presence abroad, but we need to be in a position to support contingencies where we have no permanent bases, such as Kosovo, Afghanistan, Africa, and throughout the Middle East.

In the final analysis, we may need more troops overseas, not fewer, but clearly the needs are different than they once were, and it is critical that the United States move beyond the cold war basing concepts. This is not simply a matter of security, although that is a sufficient concern, but also of assuring that taxpayers' dollars are well and wisely spent.

The Defense Department has requested as of right now $174 million for Korea and $284 million for Germany for new military construction next year. That is a large bill for a model in transition. In South Korea, our soldiers often serve on the same patches of ground U.S. troops occupied when the Korean war ended in 1953.

Today, these training areas are inadequate to accommodate the extended reach of our weapons and the rapid pace of modern maneuver warfare. In fact, more than 7,000 U.S. troops are stationed at the Yongsan Army Garrison which was built by the colonial Japanese Army before World War II.

In Grafenwoehr, Germany, our troops train on tank and artillery ranges used by the Bavarian Army over 100 years ago. The army has poured hundreds of millions of dollars into the complex in the past decade, even though the best training area consists of 18,000 acres of land, a postage stamp compared to the 400,000 acres of maneuver area and ranges available at the National Training Center in California, or the more than 1 million acres at Fort Bliss's MacGregor Range on the Texas-New Mexico border.

Further complicating matters, the Defense Department is preparing for another round of domestic base closures in 2005. As we scrutinize stateside military installations, we must take a look at our worldwide structures as well.

To make sure we get the answers to these questions right, our bipartisan legislation that Senator FEINSTEIN and I introduced and is included in this bill would create a congressional commission to take an objective and thorough look at our overseas basing structure.

The commission will consider criteria to determine whether our bases are prepared to meet our needs in the 21st century. It will be comprised of national security and foreign affairs experts who will provide a comprehensive analysis of our worldwide base and force structure to the 2005 domestic Base Realignment and Closure Commission.

We certainly want to work with the Pentagon. This is a timely review. Some in the Pentagon have suggested that the 2005 BRAC could result in the closure of one in every four domestic bases. But if we are going to reduce our presence overseas, we will certainly need stateside bases to station returning troops.

It is senseless to close bases in the United States only to later realize we made a costly and irrevocable mistake, a painful lesson we learned in the last rounds of closures.

Our national security strategy is shifting to take on the new threats facing our Nation. The position of U.S. troops around the globe must reflect that thinking.

I appreciate what the committee did in including this legislation that Senator FEINSTEIN and I introduced. It will be a major component of a future BRAC, and I hope a major part of the thinking at the Pentagon about what our threats are and where we need troops to be able to address those threats.

AMENDMENT NO. 763

Mrs. HUTCHISON. Mr. President, I have an amendment at the desk, No. 763, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON] proposes an amendment numbered 763.

Mrs. HUTCHISON. 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:

(Purpose: To add availability of family support services to the matters required to be included in the report on the conduct of Operation Iraqi Freedom in section 1023)

On page 273, between lines 17 and 18, insert the following:

(P) The results of a study, carried out by the Secretary of Defense, regarding the availability of family support services provided to the dependents of members of the National Guard and other reserve components of the Armed Forces who are called or ordered to active duty (hereinafter in this subparagraph referred to as ''mobilized members''), including, at a minimum, the following matters:

(i) A discussion of the extent to which cooperative agreements are in place or need to be entered into to ensure that dependents of mobilized members receive adequate family support services from within existing family readiness groups at military installations without regard to the members' armed force or component of an armed force.

(ii) A discussion of what additional family support services, and what additional family support agreements between and among the Armed Forces (including the Coast Guard), are necessary to ensure that adequate family support services are provided to the families of mobilized members.

(iii) A discussion of what additional resources are necessary to ensure that adequate family support services are available to the dependents of each mobilized member at the military installation nearest the residence of the dependents.

(iv) The additional outreach programs that should be established between families of mobilized members and the sources of family support services at the military installations in their respective regions.

(v) A discussion of the procedures in place for providing information on availability of family support services to families of mobilized members at the time the members are called or ordered to active duty.

Mrs. HUTCHISON. Mr. President, as I have traveled across Texas and visit military bases, I have met with many military members and their families. The feedback I have received from the members and the spouses was that the military services provided wonderful family support during the conflict in Afghanistan and Iraq.

I also heard that some family members who were deployed, particularly from the National Guard and Reserve, need better access to family support resources at the nearest military base. Because many Guard and Reserve personnel do not live where they serve, family members do not get to develop the relationships with the nearest family support service, and if it is provided by a different military service or component, than their own, it is a special hardship.

To work toward ensuring that families of our Guard and Reserve personnel are adequately served, I have introduced an amendment that requires the Secretary of Defense to include in his report on the conduct of Operation Iraqi Freedom a study of family support services provided to the dependents of National Guard and other Reserve components of the Armed Forces who are called to active duty.

This amendment requires the Secretary to address the extent to which interservice cooperative agreements are in place to support dependents of mobilized members, regardless of the member's service or if they are a member of the National Guard or Reserve, and to outline what additional outreach programs should be established to support dependents in the region of an existing military base or post.

It also asks the Department of Defense to identify additional resources necessary to ensure that adequate family support services are available to dependents of mobilized members at the nearest military installation to the residence of the dependents.

Family support access is one key lesson that we are learning from the frequent and extended mobilization of members of the National Guard and Reserve to help fight our ongoing wars. We never intended to use our Guard and Reserve this much. It is important to note that their families also serve through their sacrifices and commitment, and approving this amendment is the least we can do to help them.

I ask for a vote on the amendment, but I also want to say that because of the constraints put forward about the relevancy of amendments, I ask the distinguished chairman and ranking member if they would work with me in conference to give this amendment the direction that it originally had. It is now part of a report. It would not cost anything, but it would hopefully eventually direct the Department of Defense to establish these communication systems so our Guard and Reserve families will have the same access to support services when they are on active duty that an active-duty person's family would have.

So I ask for that commitment from the distinguished chairman to work with me in conference to give that direction and then I will ask for a vote.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I say to our distinguished colleague, I compliment her on the need to have more focus on these very important subjects regarding families. As I listened, I harkened back to my days and the composition of the Armed Forces in World War II and Korea. Far less than half were family. Today, three-quarters are family. The Army—and I expect other services but I have certainly heard in the Army—today they call it a family army. As we marched along this road to where, say, three-quarters now are hopefully blessed by a strong family background, I guess we have not kept apace with those matters which the Senator has enunciated today.

So speaking for myself, I certainly indicate that I will work closely with the Senator, and knowing the interest of my good friend and colleague from Michigan in this area, I can assume we will work together to strengthen the concepts in the report.

Mrs. HUTCHISON. I thank the chairman very much for that comment. I think the Senator is right. People do not realize that the makeup of our Armed Forces is much different today demographically than it was in the past. There are more families. There are two-service families, and it used to be mostly single people. So we have had to make accommodations which I think the distinguished chairman and ranking member and the committee have done in many areas, such as in health care. We did not have to have pediatricians as a reliable component of health care in the military so much in the past as we do now, or OB/GYN, but those are the issues we must address today.

I am pleased the Senator is doing so, and I hope we will all work together.

Mr. WARNER. Mr. President, I thank our colleague. Back in prehistoric times when I joined the Marines, on the first day you were issued your rifle and the second day they told you if you were contemplating a wife, you bad better wait. The Marine Corps would issue that, too, at the appropriate time. So things have changed.

Mrs. HUTCHISON. Things have changed for sure.

If the ranking member would also work with, that would be very much appreciated.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I commend the Senator from Texas for this amendment. I have, as recently as last weekend been reminded about the role of families as I joined hundreds of families and family members in welcoming home the National Guardsmen and Reserve officers from their tour of duty in Iraq. I was in Battle Creek, MI, to receive back the 110th Tactical Fighter Wing. The contribution of our Guard and Reserve is more and more relied upon, I agree with the Senator, to too great an extent. We have to do something about that.

In the meantime, families are at the center of this effort and we must do more for families. I know the chairman of our committee will seek to protect the language we are adding and enhance it in conference, and I will join him in that effort.

Mrs. HUTCHISON. I thank the Senator.

Mr. WARNER. Mr. President, as so many Members in the past few months, we have experienced moments of joy and moments of sorrow, sorrow in attending funerals for those who paid the ultimate price in our engagements in Afghanistan and Iraq. Members have attended those funerals and there we see the family in a way that brings to mind the importance of, up until that moment did we give them the care they deserved? And are we now giving them the care they need after the loss of their uniformed member?

Mrs. HUTCHISON. Mr. President, I say to the distinguished chairman of the committee, I think the committee went a long way toward exactly the point we are making, and that is we will never be able to repay fully those family members who have lost their loved ones.

I have talked to a mother who lost her only son, and she had lost her husband. She has nothing else left in life. There are many stories like that. But the chairman has gone a long way toward trying to compensate in the only way Congress can, by adding money for support services, adding money for the hardships, making sure health care is better, doing what we can do in Congress, though we know from our hearts we will never repay these people in totality. We cannot. We do want them to know that with the monetary compensation and the benefits we are giving, there is a deep respect for what they have done for our country that will last throughout eternity.

Mr. WARNER. Mr. President, I thank our distinguished colleague. She very much was active in the work of the committee. In years past, she was on the committee. She has not left it in a sense because the Senator gave us the encouragement to put in a number of these measures. So I thank my colleague.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. WARNER. I find that the Senate is heavily engaged in committee meetings and briefings, and if it is agreeable to the Senator from Texas, I suggest we do a voice vote. Is that acceptable?

Mrs. HUTCHISON. That would be acceptable.

Mr. WARNER. Would that be acceptable to the Senator from Michigan?

Mr. LEVIN. Yes.

The PRESIDING OFFICER. The question is on agreeing to the Hutchison amendment No. 763.

The amendment (No. 763) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 722

Mr. LAUTENBERG. Mr. President, I call up amendment No. 722 which is at the desk.

I want to be sure we have an understanding as to the time distribution. I ask the manager of the bill if an agreement has been entered.

The PRESIDING OFFICER. No unanimous consent exists with respect to time.

The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] for himself, Mr. JEFFORDS, Mr. AKAKA, and Mr. LIEBERMAN, proposes an amendment numbered 722.

Mr. LAUTENBERG. 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:

(Purpose: To modify requirements applicable to the limitation on designation of critical habitat for conservation of protected species under the provision on military readiness and conservation of protected species)

On page 48, beginning on line 16, strike ''if the Secretary determines that'' and all that follows through page 48, line 20, and insert the following: ''if the Secretary of the Interior determines in writing that—

''(1) the management activities identified in the plan will effectively conserve the threatened species and endangered species within the lands or areas covered by the plan; and

''(2) the plan provides assurances that adequate funding will be provided for such management activities.

Mr. LEVIN. Will the Senator yield for a unanimous consent agreement which I believe the Senator is interested in.

Mr. LAUTENBERG. I yield.

Mr. WARNER. I ask unanimous consent there be a time limitation of 60 minutes equally divided in the usual form with debate on the Lautenburg-Jeffords amendment No. 722 prior to a vote in relation to the amendment, and that no other amendments be in order prior to a vote in relation to the amendment.

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

Mr. LAUTENBERG. I thank the managers.

The amendment is cosponsored by Senator JEFFORDS. I ask unanimous consent also that Senators AKAKA and LIEBERMAN be added as cosponsors.

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

Mr. LAUTENBERG. Madam President, this bill would exempt the Department of Defense from respecting critical habitat for endangered species on its lands. This provision of the bill is flawed for three reasons.

One, it would severely weaken our country's efforts to protect endangered species. There is a lot of effort that has gone into developing legislation in protecting endangered species. Seeing them disappear is a painful recognition. We are now beginning to see species disappear from our oceans, the Atlantic Ocean. The newspapers have been featuring stories about the disappearance of species like cod, halibut, and blue marlin. We have to be careful because each of these affects the rest of the ecology. That could be disastrous.

Second, this action is simply not necessary to maintain our military readiness. An example is the dispute over Vieques Island in Puerto Rico, the territory off the mainland of Puerto Rico.

Third, it ignores the Defense Department's long record of successfully balancing readiness and conservation. We want to do both.

Protecting critical habitat has long been an essential tool that Federal, State, and local jurisdictions have used to protect endangered species. When endangered species have no place to live, they perish. The bill before the Senate would allow the Defense Department to ignore the Endangered Species Act in favor of using something called the Integrated Natural Resources Management Plan, called INRMP, for threatened and endangered species. INRMPs are not subject to the same strong standards as those under the Endangered Species Act.

Under this bill, no area could be designated a critical habitat on DOD property. No matter how threatened the species, no matter what is found on the land, it will not be strongly protected.

It is conceivable that the Defense Department could make this decision under that program, even if it is not needed, for them to conduct their exercises or their duties. The species have to be protected.

My amendment is a reasonable approach. It adds two protections to reinforce the effectiveness of the INRMP plans. First, the Secretary of the Interior must determine that the plan would conserve a threatened or endangered species, that it has to make sure we try our best to have that species endure. Second, there must be sufficient funding to implement these plans.

By applying this two-part standard, DOD could continue to maintain its historical success, balancing conservation and military readiness. This type of approach does work.

Only two species have gone extinct after being put on the endangered species list, while over 600 species not on the list have gone extinct during that time.

DOD has 25 million acres of land that are home to 300 federally listed, threatened, and endangered species. The Department of Defense has played a crucial role in preventing these species from sliding into extinction. It is not suggested anywhere that they want these things to happen, but we have a disagreement on what it will take to keep the species alive.

Camp Pendleton in California is a good example of how the balance has worked on the ground. Of 18 species listed as threatened and endangered on the 125,000 acres, critical habitat has been recommended for only 5 of those threatened species. Yet using the flexibility built into the Endangered Species Act, the Fish and Wildlife Service decided to restrict less than 1 percent of all potential training areas from use for training exercises.

In his testimony before the Armed Services Committee last March, GEN Nyland, Assistant Commandant for the Marine Corps, agreed that codifying an effectiveness test for the INRMPs would provide DOD with greater certainty in its decisionmaking. That is the purpose of this amendment.

The American people have also spoken on this issue. We should listen. According to a recent Zogby poll, 85 percent of registered voters believe the

Defense Department should follow the same environmental laws as everyone else. The two-part test in my amendment will help assure that DOD continues to do its part in conserving endangered species.

As I said before, I think they really want that to happen. The question is what the approach is going to be. The issue is about balancing national security with our environmental security and the Pentagon has shown in the past that we can do it. I urge my colleagues to support my amendment.

From our half hour of time, I yield 10 minutes to the Senator from Vermont.

Mr. JEFFORDS. Like many of my colleagues, I am a veteran. I have the greatest respect for those who serve this Nation. I served the Naval Reserves for 30 years and was on active duty in the Navy in the 1950s. My ship, the *McNair,* was the first U.S. military ship to navigate the Suez Canal after the Egyptians took control of the canal in 1955. I am a member of the Veterans of Foreign Wars, the VFW.

Like every Senator, I am concerned about our troops on our military bases in the States and throughout the world. I want them to have every advantage as they prepare for and engage in military conflict.

However, sweeping changes to environmental laws, even with changes that are proposed during the time our country is at war, should be considered by the Environment and Public Works Committee. Our committee is charged with understanding the implications of change in these laws as well as the need for change and to weigh the consequences to public health and the environment.

As our distinguished colleague who chairs the Armed Services Committee observed in a recent hearing in our Committee, these laws have taken years to put in place.

However, Section 322 of S. 1050, the National Defense Authorization Act for Fiscal Year 2004 contains a provision that would change how critical habitat is designated under the Endangered Species Act, a law within the jurisdiction of the Environment and Public works Committee.

Section 322 prohibits the Secretary of the Interior from designating critical habitat on any Department of Defense lands that have an integrated natural resources management plan, known as INRMP, prepared under the Sikes Act, if the Secretary determines that the plan addresses special management consideration, or protection.

The INRMP provisions of the Sikes Act were never intended to be a substitute for the Endangered Species Act, but rather a complement to it.

As a complementary conservation measure, INRMP is not subject to the same rigorous implementation requirements as conservation measures taken under the Endangered Species Act, such as being based on the ''best available science.''

INRMPs are often substandard compared to the ESA, and the required INRMP components under the Sikes Act cannot be universally relied upon to accomplish species conservation goals.

In addition, Section 7(j) of the Endangered Species Act already allows the law's requirements to be waived, at the request of the Secretary of Defense, when national security concerns outweigh those of species conservation. To date, no Secretary of Defense has ever utilized this flexibility in the Act. Granting a blanket exemption to the ESA removes the ability for decisions to be made on a case by case basis when national security concerns are real.

After hearings in the Environment and Public Works Committee both last year and this year, on this issue and the other DOD proposals within the jurisdiction of the EPW Committee, I do not believe the case has been made to warrant these changes to existing law.

However, the bill before us contains a provision that would substantially change the way critical habitat is protected on Department of Defense lands.

The amendment offered by myself and Senators LAUTENBERG and AKAKA will help to ensure that important protections underlying the Endangered Species Act will not be lost under the integrated natural resource management plans developed under the Sikes Act and this Defense Authorization bill.

The amendment would require that the Secretary of the Interior determine in writing that the Integrated Natural Resources Management Plan will effectively conserve the threatened and endangered species covered by the plan and assure that adequate funding is provided for the management activities.

This means that if land is needed for a species and military training, the Secretary of the Interior will review the Defense Department's plan for managing the lands and funding the management activities to make sure that species will be adequately protected.

The Department of Defense and the Department of the Interior have been working together to balance needs of the military for training with the needs of endangered species for survival. This amendment affirms that balance.

It is my hope that the two agencies will continue to work cooperatively and I urge my colleagues to support this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LAUTENBERG. Madam President, I yield to the Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Madam President, I rise today in support of the Lautenberg-Jeffords amendment to establish minimum criteria for whether an Integrated Natural Resource Management Plan or INRMP for a military installation provides sufficient protection for endangered species to make a critical habitat designation unnecessary. As I have previously stated, I commend the chairman of the Readiness Subcommittee for the manner in which he handled this difficult issue. We had two very good hearings to address the Department's proposal.

I am particularly appreciative that the provision in this bill takes a case-by-case approach to the Endangered Species Act instead of providing the blanket exemption sought in the administration proposal. I believe the provision fall short, however, of codifying the existing case-by-case approach.

During the Committee's consideration of this bill, I offered an amendment which would have codified the case-by-case approach by including minimum criteria for INRMPs on military lands. Unfortunately, my amendment was defeated. I am pleased to join Senators LAUTENBERG and JEFFORDS in this amendment which, I believe, provides the necessary criteria to be included in INRMPs for military lands in order for the Secretary of the Interior to determine that the designation of critical habitat is unnecessary.

As the ranking member of the Readiness Subcommittee, I remain committed to the readiness of our military through proper training. We have heard from the Joint Chiefs of Staff that our Armed Forces are more ready today than they have been before. Our military has found ways to comply with applicable laws by working with neighboring communities, state and local officials. I firmly believe that this approach provides the Department of Defense with the necessary tools and assurances it needs to conduct training activities without unnecessarily undermining environmental provisions. I urge my colleague to support this amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. JEFFORDS. Madam President, I have no further requests for time. I see my chairman standing. I yield the floor.

Mr. INHOFE. Madam President, I yield myself such time as I consume.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Madam President, I have been listening with great interest to the debate. I start out saying I have some similarities to the previous speaker from Vermont. I am a veteran, I should say.

Also, the reference was made to the Environment and Public Works Committee. I do agree with the Senator from Vermont that there is a jurisdiction thing there in which we are interested. However, there is also one having to do with the readiness, with the authorization bill that is under consideration now.

I can't tell you how strongly I feel about this particular amendment. This is something we have been discussing now, not for just days or weeks but for years. We have actually had several hearings. Right now, we have had some 12 hearings in the past 2 years on this subject. Some of this was when I chaired the Readiness Subcommittee of the Senate Armed Services Committee. We have had hearings there and, of course, hearings in the Environment and Public Works Committee.

I share the compliments to Senator ENSIGN, in the way he has been chairing this committee and spending the time on this very critical subject.

Let me just remind everybody that when INRMP first came along, the Integrated National Resource Management Plan, they came along not in a Republican administration, they came along in the Clinton administration. They recognized at that time the seriousness of proper training and the fact that we have a very serious problem affecting some of the environment encroachments on our limited land area. It is something that is measured, not by cost of training, not by effectiveness of training, as much as it is human lives.

The Senator from New Jersey talked about the Endangered Species Act. I spent 3 years and lost trying to stop the prohibition of live-fire training on a Navy range on land we own in Vieques. I have a background, as does the Senator from Vermont, in having gone through training. I am sure he would share this with me. When we went through training and crawled under inert fire, it was quite a bit different from crawling under live fire. This is the kind of training that I think we had in Vieques—integrated training, which we don't have today. In Kuwait, we lost five lives, four of whom were Americans. If you read the accident report, it very clearly states that we lost those lives because we didn't have adequate live-fire training. It was denied us right before that time at the range in Vieques.

I am going to talk about Camp Pendleton.

Before I do so, the Senator from New Jersey had talked about Camp Pendleton and how compatible everything has been in Camp Pendleton. He suggests that in Camp Pendleton there are some 17 miles of shoreline. We can only train in some 200 yards of that area. It is a very serious matter.

I agree that we have very well-trained troops in the field. But I also say we are not enjoying the state of readiness that our troops are entitled to have—unlimited capability of training in a live and integrated relationship.

The Lautenberg amendment would essentially gut the bill language because it would impose an unachievable standard of recovering species according to the legal definition of concern. DOD would be forced to guarantee sufficient funding to accomplish species recovery while the Department of Interior and Endangered Species Act have not been able to recover species.

This is very important. We have had since 1973—30 years—the Endangered Species Act. Yet no species have come off the list as a result of operation of the Endangered Species Act. In other words, he is putting on a test that cannot be fulfilled. In other words, we are not going to be able to have this type of training.

This is the quote from a committee hearing which we had. This was the Deputy General Counsel for Environment and Installations. It gets into the question as to how this is going to affect the training:

> With respect to the ESA, what our proposal seeks to do is to codify a policy that was adopted during the Clinton administration with respect to the INRMPs.

Then Craig Manson said:

> I concur as to the ESA provision.

The amendment is very similar to the amendment that Senator AKAKA tried to get approved in committee. Normally, Senator AKAKA and I agree on these issues. During the years when I was chairman of the Readiness Subcommittee of the Senate Armed Services Committee, and he was my ranking member, and during the years he was chairman, I was his ranking member, we normally agreed on these issues.

However, I believe the Lautenberg amendment goes much further than the Akaka amendment went because it is an amendment that gets very serious in terms of forcing something to come off the list.

The essential difference between Senator AKAKA's failed amendment in committee and Senator LAUTENBERG's amendment is a subtle but crucial difference between ''provide conservation benefit for the species,'' which Senator AKAKA wanted to do and which I can understand, and provide a conservation benefit as Senator LAUTENBERG wants to do, which is ''conserve the species.'' In other words, recover. Recovery is something that can't happen. It has never happened. I will read to you from the Endangered Species Act of 1973. It said in addressing the terms ''conserving'' and ''conservation'' that it means ''to use and use all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this act are no longer necessary. Such methods and procedures include but are not limited to all activities associated with scientific resources and management, such as research, law enforcement, habitat acquisition and maintenance promulgation, live trapping, transplanting,'' and it goes on and on.

It says you must be able to recover. As he said, never have we been able to recover a species that was actually a result of the operation of the ESA.

The Department of Defense opposes the amendment because, No. 1, the language could have perverse and unintended consequences such as depriving the Fish and Wildlife Service the flexibility to refine the conditions in light of further experience or to tailor them more specifically to diverse sites. The language would give rise to litigation.

As the chart shows, again quoting Craig Manson:

> In fact, the process of using the Integrated Natural Resources Management Plan is a collaborative process that requires the agreement of the Fish and Wildlife Service and INRMP and cannot be approved without the agreement of the Fish and Wildlife Service. The Service will continue to be involved. Habitat will continue to be afforded the protections that are necessary for the conservation of the species.

I think most of us understand. That is the seriousness that we are dealing with right now.

The next concern we have is the lawsuits which are now preventing continuation of a policy started by the implementation of the Clinton/Gore administration. And we are talking about the INRMP.

This is Jamie Irappaport Clark, the Clinton administration's Director of the U.S. Fish and Wildlife Service. He said:

> Do I believe that Integrated Natural Resource Management Plans can provide the needs for conservation of listed species? Absolutely.

This came from the Clinton administration—not from the current administration. That was the Clinton Fish and Wildlife Director, Jamie Clark, who initiated the practice and gave the testimony before our committee.

The marine field training is rated ''not combat capable'' at Camp Pendleton.

I am glad the Senator from New Jersey brought up Camp Pendleton. Camp Pendleton is a good model to use as to what we don't want to do. Camp Pendleton has all of these 17 miles of shoreline. We can only use some 200 yards. In fact, if you look at the shoreline, that 200 yards is so small that it doesn't even show up on the map. This shows the proposed critical habitat at the Marine Corps base at Camp Pendleton, 57 percent. That tells us what is happening to our training area.

What is the result of that? The encroachment impact of training degradation at Camp Pendleton in the field of ''not combat capable'' is fifty percent. Fifty percent of the training that takes place has that category of T–4, which is ''not combat capable,'' and 69 percent is ''combat capable'' for only a low threat. That is what is happening.

How does that translate into lives? We don't know. As I mentioned, we have lost lives because of a lack of training. This is one that is very serious.

The Department of Defense set out to establish quantity of data on encroachment selecting the Marine Corps base at Camp Pendleton as the subject of the study and came to the conclusion that 50 percent of that training would not be combat ready.

That is how serious this is.

More holistic than mere designation of critical habitat, the management plan we are talking about, the INRMP approach, pioneered by the Clinton-Gore administration, considers habitat, food, water, predators, noise, and many more factors.

The Fish and Wildlife Service opposed the Lautenberg amendment.

Let me conclude by saying this is very serious. I could be talking about ranges other than Pendleton. Pendleton I talked about because that was brought up by the Senator from New Jersey. In the case of Camp Lejeune, in the case of Fort Bragg in the southeastern part of the United States, we are down now to just a small portion that can be used for training.

I invite my colleagues to go down to Fort Bragg, go down to Camp Pendleton, and look and see how they are inhibited from being able to have the type of training that will really prepare them properly for combat in harm's way to which we will be sending them.

I think it is very significant. There is not an issue in this bill that is more significant now than trying to do what we can to provide good training. It has been said before—and I would have to echo it—that the military has been an excellent steward of the environment. And that is part of the problem. If you go to Fort Bragg today, after having been there 2 years ago, you see many more of these red ribbons around areas precluding them from being able to train there because of the urban sprawl and other encroachments on our training capabilities.

Our language is very good, and I would encourage us, at the time we vote, to reject the Lautenberg amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, I thank our colleague from Oklahoma. I also thank our distinguished colleague from this side. It looks as if we are going to conclude this debate such that the Senate can turn to a rollcall vote at about 2:45.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, how much time is left on this side on this amendment that is now pending?

The PRESIDING OFFICER. Fourteen and a half minutes.

Mr. REID. Madam President, I ask my friend from Vermont, how much time do you need?

Mr. JEFFORDS. About 5 minutes.

Mr. REID. Would that be appropriate?

Mr. WARNER. I do want our distinguished colleague from Nevada, who is the chairman of the subcommittee——

Mr. REID. How much time does the Senator from Nevada need?

Mr. ENSIGN. Probably 7 or 8 minutes. I will try to cut it off by 2:45.

Mr. REID. Why don't we have the vote at 2:50?

Mr. WARNER. That would be helpful and enable Senators to speak.

Mr. REID. That would be 15 minutes, each having 7½ minutes.

Mr. WARNER. Fine.

Mr. REID. Madam President, while we are here, the Senator from Virginia has also said he would agree that the next amendment in order is Harkin. That is already the order, but the time on that will be one-half hour evenly divided in the usual form regarding second-degree amendments.

Mr. WARNER. Right.

Mr. REID. Following that amendment, Senator BINGAMAN has an amendment on missile defense which Senator WARNER has reviewed.

Mr. WARNER. Right.

Mr. REID. Senator BINGAMAN has agreed to a 30-minute time agreement on that. That would be under the usual form relating to second-degree amendments. I ask that in the form of a unanimous consent request.

Mr. WARNER. No objection on this side.

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

Mr. REID. The reason we have done this is there is a briefing at 3 o'clock. We could stack the two votes, the Harkin and Bingaman votes, at around 4 o'clock, thereabouts.

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

The Senator from Vermont.

Mr. JEFFORDS. Madam President, I would like to talk just a minute about the need for available space for training. I was in the Navy. I was on board a destroyer. I was a gunnery officer. We were involved in wartime activity in Lebanon. Our training and all was for shore-fire bombardment. I understand what is needed and what is necessary, and I know this bill is carefully crafted to ensure there will be adequate space for the types of operations I participated in. I know our military is pretty efficient and there are areas that are designated that they cannot hit. There is always a chance they might, but they can rearrange things to make sure those areas are not in their gun sights. It is not anything that is of great difficulty to do. These are huge areas.

So I think the arrangement we have under this amendment is very reasonable and, from my own experience, quite possible to keep everybody happy. So I disagree with the comments of my chairman.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Nevada.

Mr. ENSIGN. Madam President, as chairman of the subcommittee which reviewed this proposal and included this proposal on the Endangered Species Act, I want to spend a couple minutes to educate our colleagues on why it is important to defeat this amendment that has been proposed.

First of all, we held two hearings—Senator AKAKA and I did—and we worked beautifully together. Senator AKAKA is a wonderful person to work with. Our staffs worked really well together. On several of the proposals the administration had put up on the environment, we held hearings. We brought in experts from both sides. Everybody was represented. We had very fair hearings. I think everybody who was in attendance would agree the hearings were fair and balanced.

Out of those hearings came a couple of findings: One is that over the last 20 years the military has done a fabulous job with its ranges in protecting habitat as well as endangered or threatened species. I think there is no disputing that.

In the past, I think there certainly were some mistakes that were made by the military. But in the last 20 years or so we have done a really good job with our armed services protecting the habitat and the species on these various ranges.

What has happened now is we are in a situation where the courts, instead of allowing what has happened with some of these what are called Integrated Natural Resource Management Plans, which are in place and have done a great job protecting the species and the habitat—what the courts are threatening to do, and it looks as if it is going to happen, is those will no longer be able to be used. We will have to go with much stricter definitions, much more costly ways of doing business, and a lot of the ranges will be shut down.

I am the chairman of the Readiness Subcommittee. We are in charge to make sure our armed services are ready when they are called upon to defend the United States of America.

I have a letter I would like to have printed in the RECORD. I ask unanimous consent that be the order.

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

CHAIRMAN OF THE
JOINT CHIEFS OF STAFF,
Washington, DC, May 21, 2003.

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

DEAR SENATOR WARNER: I would like to underscore the critical importance of the Endangered Species Act language as currently contained in S. 1050, the Defense Department Authorization Bill.

The Department of Defense's primary mission is to maintain our Nation's military readiness. We possess the most ready, capable armed forces in the world; however, expanding trends in environmental restrictions are significantly impacting military training and operational readiness.

We need your continued support to restore needed balance between environmental and national security concerns, and to protect activities essential to prepare our men and women for combat.

Thank you again for your strong leadership and concern for America's military.

Sincerely,

RICHARD B. MYERS,
Chairman of the Joint Chiefs of Staff.

Mr. ENSIGN. This letter pretty much sums up what we try do in this bill. We

are balancing environmental protections with military readiness. Sometimes these are competing concerns.

We did not overreach in this bill. We struck a balance. We struck a very delicate balance, but we think we have struck a balance.

If anybody has any questions, they just have to go visit our military ranges in Southern California, in the Carolinas. Wherever you go across the country, visit our ranges and you will see some of the most pristine areas you can find, some of the best protected habitat you can find, and these endangered and threatened species are flourishing.

It is not a question of this bill rolling back environmental protections. We do not want the courts putting such limits on the military that they cannot go forward in this balance in the future, where we protect species and habitat and we ensure military readiness for our armed services.

A couple of specific problems with this amendment: The INRMP sites and the Endangered Species Act are complementary statutory frameworks that together ensure protection of endangered and threatened species. The Lautenberg amendment introduces an unnecessary and complicated requirement, and we believe—the Department of Defense and the Department of the Interior believe—it will lead to more lawsuits, not less. We are trying to get away from the lawsuits and make sure we are spending the money instead of fighting legal battles in protecting the species and making sure we are ready for what our armed services are called to do.

I ask our colleagues to seriously take a look at this. We just saw the results of great readiness in Iraq. The arguments were made: We are ready; there is not going to be a problem.

We were ready because our ranges were able to be used. If we roll back the ability to use our ranges, we will not be ready. We will not have the kind of military readiness we need in future conflicts. That is why it is so important that we do as the language in the bill suggests, protect the balance between environmental protection and military readiness.

I reserve the remainder of my time.

Mr. LEAHY. Mr. President, it is opportune the Senate is considering the National Defense Authorization Act for fiscal year 2004 just after the successful military action in Iraq. Unfortunately, as is the case with many of the efforts undertaken by this administration, there is an attempt to bypass environmental regulations under the cover of some national guise—in this instance military preparedness. In particular, I am incensed by section 322, which would prohibit the Secretary of the Interior from designating critical habitat on any Department of Defense, DOD, lands that have an Integrated Management Natural Resources Plan, INRMP.

The Sikes Act was never intended to be a substitute for the ESA but rather a complement to it. The Sikes Act is clear that it does not ''affect any provision of a Federal law governing the conservation or protection of fish and wildlife resources.'' As a complementary conservation measure, INRMPs are not subject to the same rigorous implementation requirements as conservation measures taken under the ESA, such as being based on the ''best available science.'' In addition, existing Fish and Wildlife Service policy allows the presence of ESA requirements to function as an incentive to DOD land managers to develop the best INRMPs possible. This policy encourages the development of good INRMPs. A blanket exemption to critical habitat designations would remove this incentive to practice the best stewardship possible.

Why the need for such an exemption? The administration would have the American public believe that environmental laws, in this instance the Endangered Species Act, ESA, infringes upon the readiness of American troops by drastically impeding training exercises. Yet there is even discord within the administration. At an Environmental Protection Agency, EPA, hearing held in the Senate earlier this spring, EPA Administrator Christine Todd Whitman noted that she did not ''believe that there is a training mission anywhere in the country that is being held up or taking place because of an environmental protection regulation.'' I have to wonder if it is statements like this, where Administrator Whitman was speaking for the environment and not just toeing the administration line, that helped lead to her recent resignation. I hope the administration will fill her shoes with someone that will make protecting the environment his or her first priority as I believe Administrator Whitman did under very difficult circumstances.

Finally, it is absurd to provide such an exemption when the ESA allows for the law's requirements to be waived, at the request of the Secretary of Defense, when national security concerns outweigh those of species conservation and other solutions cannot be found. To date, no Secretary of Defense has ever utilized the flexibility in this act. Granting a blanket exemption to the ESA removes the ability for decisions to be made on a case-by-case basis and only when national security concerns are real.

This administration's continued attack on over 30 years of implementing environmental laws is in blatant disregard to the sentiment of the American public. A recent poll showed that over one-half of the American public felt that the U.S. Government was not doing enough to protect the environment and three-quarters of those polled wanted to see stronger enforcement of these laws. Yet, again and again, whether allowing for future inclusion of wilderness into the Federal lands, mining in protected grizzly bear habitat in Montana, or the possible forfeiture of thousands of miles of road systems on Federal lands, this administration continues to shut the American public out of the debate over the protection of their environment. I call upon my colleagues to stop this attack by the administration and strip section 322 from the National Defense Authorization Act.

Mr. DASCHLE. Mr. President, I rise to support the amendment offered by Senators LAUTENBERG and JEFFORDS to the Department of Defense authorization bill.

The bill before us would block any designation of critical habitat under the Endangered Species Act on any Department of Defense lands.

The Department of Defense controls 25 million acres of land where some of the best habitat remains for more than 300 threatened and endangered plants and animals.

Since critical habitat designations would not be applied to military lands, the Lautenberg-Jeffords amendment would add two simple requirements to ensure that the Department of Defense develop integrated natural resource management plans to protect species.

The amendment would also require the Secretary of the Interior to ensure that a resource management plan conserves threatened and endangered species and is adequately funded.

Critical habitat is an important component of the Endangered Species Act and provides help to species near extinction by identifying areas that are needed for species survival and recovery.

This provision in the bill is not necessary to maintain our military readiness. According to a General Accounting Office report, issued on June 2, 2002, on military training: ''training readiness, as reported in official readiness reports, remains high for most units and that the level of readiness does not support DOD's claims its readiness is being hurt by environmental laws.'' The Department of Defense has a strong record of balancing readiness and conservation.

I urge my colleagues to support this important amendment.

The PRESIDING OFFICER. Who yields time?

Mr. JEFFORDS. Madam President, I would like to reiterate that there is plenty of room for the training. All we ask is to make sure before that training is conducted there are studies done to make sure endangered species can be saved and they can reorient where the training is to accommodate them.

The GAO found the military has presented no evidence that the Endangered Species Act has impaired training. If the DOD needs an exemption from the Endangered Species Act, sections 7(j) and 4(b)(2) provide relief from the designation of critical habitat. The DOD has never sought an exemption under 7(j). How can we say the law needs to be changed when the relief under current law has never been used?

I refer the attention of my colleagues to this quote:

The President has said that he wants the Federal Government to be held to the same standards of environmental cleanup as the private sector . . . so, we've [EPA] said you have got to meet the same standards as the private sector.

That was Christine Todd Whitman on the Dianne Rehm show on May 21, 2003. And quoting again:

I don't believe that there is a training mission anywhere in the country that is being held up or not taking place because of the environmental protection regulations.

That is EPA Administrator Christine Todd Whitman's testimony before the Senate Committee on Environment and Public Works on February 26, 2003.

This is a perfectly reasonable amendment. It will protect and not interfere at all with the training requirements of our Nation. I seriously counter the remarks made recently.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Nevada.

Mr. ENSIGN. In response to the EPA administrator's quotes we have before us today, I spoke to the administrator. We had testimony from the EPA following this to try to clear up any kind of confusion. As I mentioned, we have not had problems with readiness up to this point because the Integrated Natural Resource Management Plans have been working well as a balance, making sure habitat and species are protected, but also where readiness could go forward and be maintained at a high level. What the military is concerned about is the court decisions that look like they are going to go against the military to where they will not be able to use the ranges in an effective manner. The statement that was made by Administrator Whitman, 5 years from now, whoever the EPA administrator would be at that time, would not be able to be made.

People are very concerned that readiness will be severely affected if the court decisions are allowed to go forward. This bill language says to the courts, balancing environmental concerns with military readiness is working. Let's keep with what is working instead of putting huge requirements on to the military where they will not be able to use the ranges.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Vermont controls the balance of the time.

Mr. JEFFORDS. I yield to the ranking member of the committee.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. How much time does the Senator from Vermont have remaining?

The PRESIDING OFFICER. Four-and-a-half minutes.

Mr. LEVIN. Madam President, I support the Lautenberg-Jeffords-Akaka amendment. It has been said earlier in the debate that the DOD spokesperson said all the Department wants to do is codify the Clinton administration approach to this issue of endangered species on military lands. That is precisely what the Lautenberg amendment does. If we want to codify—as the opponents of the amendment say they want—what the Clinton administration did relative to this issue, this is the way to codify it. If we don't adopt this amendment, it is not in our code. It is not codified.

I support the amendment and hope it can be adopted.

The PRESIDING OFFICER. The Senator from Vermont.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ENSIGN. Madam President, have the yeas and nays been ordered on the amendment?

The PRESIDING OFFICER. They have not.

Mr. ENSIGN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 722. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) is necessarily absent.

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

The result was announced—yeas 51, nays 48, as follows:

[Rollcall Vote No. 190 Leg.]

YEAS—51

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Lincoln
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Nelson (FL)
Breaux	Harkin	Nelson (NE)
Byrd	Hollings	Pryor
Cantwell	Inouye	Reed
Carper	Jeffords	Reid
Chafee	Johnson	Rockefeller
Clinton	Kennedy	Sarbanes
Collins	Kerry	Schumer
Conrad	Kohl	Snowe
Corzine	Landrieu	Specter
Daschle	Lautenberg	Stabenow
Dayton	Leahy	Wyden

NAYS—48

Alexander	Coleman	Graham (SC)
Allard	Cornyn	Grassley
Allen	Craig	Gregg
Bennett	Crapo	Hagel
Bond	DeWine	Hatch
Brownback	Dole	Hutchison
Bunning	Domenici	Inhofe
Burns	Ensign	Kyl
Campbell	Enzi	Lott
Chambliss	Fitzgerald	Lugar
Cochran	Frist	McCain
McConnell	Santorum	Sununu
Miller	Sessions	Talent
Murkowski	Shelby	Thomas
Nickles	Smith	Voinovich
Roberts	Stevens	Warner

NOT VOTING—1

Edwards

The amendment (No. 722) was agreed to.

Mr. DURBIN. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Under the previous order, what is the next?

The PRESIDING OFFICER. The Harkin amendment.

The Senator from Iowa.

AMENDMENT NO. 774

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 774.

Mr. HARKIN. Madam 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:

(Purpose: To prohibit the use of funds for acquiring for inventories of the Department of Defense property in excess of the requirements for the inventories)

On page 44, between lines 18 and 19, insert the following:

SEC. 313. INVENTORY MANAGEMENT.

(a) LIMITATION ON PURCHASE OF EXCESS INVENTORY.—(1) Subject to paragraph (4), no funds authorized to be appropriated by this Act may be obligated or expended for purchasing items for a secondary inventory of the Department of Defense that would exceed the requirement objectives for that inventory of such items.

(2) The Secretary of Defense shall, within 30 days after the date of the enactment of this Act, review all pending orders for the purchase of items for a secondary inventory of the Department of Defense in excess of the applicable requirement objectives for the inventory of such items, and shall ensure compliance with the limitation in paragraph (1) with respect to such items.

(3) The Secretary shall, within 30 days after the date on which a requirement objective for an item in a secondary inventory of the Department of Defense is reduced, review all pending orders for the purchase of that item and ensure compliance with the limitation in paragraph (1) with respect to that item.

(4) The Secretary may waive the limitation in paragraph (1) in the case of an order for the purchase of an item upon determining and executing a certification that compliance with the limitation in such case—

(A) would not result in significant savings; or

(B) would harm a national security interest of the United States.

(b) REDUCTION OF EXCESS INVENTORY.—(1) No funds authorized to be appropriated by

this Act may be obligated or expended after March 31, 2004, to maintain or store an inventory of items for the Department of Defense that exceeds the approved acquisition objectives for such inventory of items unless the Secretary of Defense determines that disposal of the excess inventory—

(A) would not result in significant savings; or

(B) would harm a national security interest of the United States.

(2) Not later than January 1, 2004, the Secretary shall establish consistent standards and procedures, applicable throughout the Department of Defense, for ensuring compliance with the limitation in paragraph (1).

(c) REPORT ON INVENTORY MANAGEMENT.—(1) Not later than March 31, 2004, the Secretary of Defense shall submit to Congress a report on—

(A) the administration of this section; and

(B) the implementation of all recommendations of the Comptroller General for Department of Defense inventory management that the Comptroller General determines are not fully implemented.

(2) The Comptroller General shall review the report submitted under paragraph (1) and submit to Congress any comments on the report that the Comptroller General considers appropriate.

Mr. HARKIN. Is the time 15 minutes equally divided?

The PRESIDING OFFICER. It is 30 minutes equally divided.

Mr. HARKIN. Madam President, this amendment seeks to reduce the wasteful buildup of unneeded inventory at the Department of Defense. Based on the findings of the General Accounting Office, I believe this amendment would save at least $2 billion annually.

Last year, as a member of the Defense Appropriations Subcommittee, I requested that the GAO prepare a report on the inventory requirements of the Department of Defense. That report has just been printed and released dated May 2003. This is the newest in a series that I have had GAO undertake in recent years on related topics.

Pentagon waste is not a new issue, nor is the issue addressed by my amendment the only kind of waste that occurs within DOD. People have pointed out numerous examples of waste in DOD over the years, some quite spectacular.

Later in my statement I will talk about the other kinds of waste we uncovered by past GAO reports that I requested. Much has been done to reduce Pentagon waste, and I commend those efforts. The chairman and ranking member, both, and when they have been in reversed positions, have made a great effort in this regard. We have reduced Pentagon waste.

However, the Department of Defense remains the largest purchaser of goods in the Federal Government. The size of the bill continues to increase, and we have an authorization bill of $400 billion. That includes $75 billion for procurement. At those levels, we do need to be vigilant and we need to perform an ongoing watchdog role. That is what this amendment is aimed to ensure.

I am sorry to say, despite the long history of investigations and GAO reports, many of the problems still have not been solved. That is why I offer this amendment.

What the amendment addresses is, the Department of Defense routinely purchases and keeps on hand, for the purpose of meeting the Department's requirements, many items in a category it calls secondary inventory. Secondary inventory means spare and repair parts for weapons. It also includes clothing, medical, and many other items that are not weapon systems themselves. Obviously, there is a large amount of such supplies our military needs to keep on hand—over 2 million items.

According to the GAO, the Pentagon has approximately $70 billion worth of this secondary inventory. Unfortunately, out of the $70 billion worth of secondary inventory, there was about $38 billion in excess or unneeded inventory. So we have $70 billion in secondary inventory, much of which is needed; but GAO identified $38 billion in what they call excess inventory, inventory that the Pentagon says they do not even need. That is more than half of the secondary inventory classified as excess. This is totally unacceptable. It is unacceptable that DOD could find itself with more than half of its secondary inventory above their own requirements. I am sure there are valid explanations why some requirements are misjudged, but to end up with $38 billion worth of unneeded inventory out of a total of $70 billion of inventory seems to me to be a pretty good definition of waste.

It is worth pointing out that the Department of Defense generally concurred with this GAO report. The Department did not disagree with these findings.

But that is not all. Of the $38 billion in excess secondary inventory, according to the GAO, $1.6 billion was still on order. In other words, we are still paying contractors to make $1.6 billion worth of stuff the Pentagon itself has acknowledged it does not even need. So why weren't the orders canceled?

My amendment addresses this problem in two simple ways. First, it requires the Pentagon to cancel those orders for unneeded items where it makes sense; that is, unless the Secretary determines, one, that it will not save money; or, two, the Secretary determines that it will harm national security. Unless he finds either one of those, then the Department must cancel orders for items it does not think it needs.

Second, my amendment requires the Pentagon to reduce the excess inventory it already has on hand. Again, if the Secretary determines that, (a), it will not save money or, (b), it will harm national security, then the Department can keep right on storing these items. Otherwise, they have to sell the stuff so we do not pay to keep storing it. According to the GAO, that excess inventory on hand was worth about $36 billion.

I believe these two simple steps should save taxpayers at least $2 billion annually without imposing burdensome requirements on the Department of Defense and without compromising defense readiness.

I have requested GAO reports in the past, and many of those reports also found significant waste in the Department of Defense. Reports on inventory that the Army and the Navy ship from one location to another found that each service loses track of at least $1 billion worth of shipped items every year. Imagine that. They ship it, they do not know if they shipped it, and they do not know if anyone got it. They lose track of $1 billion a year in inventory.

Last July, another report revealed a complete breakdown in tracking and control of Air Force inventory shipped to contractors. The Air Force could not make sure that contractors had asked for items they needed, they could not make sure they had received what was sent, and they could not make sure they used what they got on Government contracts, and they did not follow up on known problems. This was just a report from last summer.

Other reports have found that the Pentagon pays too much for common items and buys things we do not need, and on and on.

I believe we do have a serious problem in inventory control with the Department of Defense. I half facetiously, a year or two ago when I offered a similar amendment, said that the Government is now contracting out a lot of functions, and the Bush administration seems to be intent on contracting out, that maybe what we really ought to do is contract out inventory control for the Department of Defense to Wal-mart. I can guarantee that Wal-Mart does not lose $1 billion a year in inventory. I guarantee when Wal-Mart orders items, they know if they have been shipped and they know who gets it. I picked on Wal-Mart, but I could name another company. But my point is made.

We have a huge bureaucracy, the Department of Defense. They are buying billions of dollars' worth of items with taxpayers' money, and in many cases they cannot account for it. We have the stockpiling of excess items, and they keep right on buying items that they say they do not even need.

Would someone please make sense of this to this Senator? Why is the Department of Defense ordering items that it has already said it does not need, yet keeps the orders going? That is what my amendment is attempting to do.

Some of the past GAO reports have resulted in improvements. The Navy, for example, claims to have accounted for $2.5 billion of inventory discrepancies. But I am sorry to say the recommendations are frequently not followed. Just on inventory issues, the GAO has more than 30 open recommendations on using accurate data, setting consistent procedures and following them, adopting commercial best

practices and modern inventory systems, taking timely actions, and many more—30 open items the GAO has identified to which the Department of Defense simply is not paying attention.

My amendment also requires that the Department of Defense report to Congress on what the Department is doing to implement these open GAO recommendations on defense inventory issues.

Again, this amendment is a modest step forward. It is needed because the Department has either not been willing or not been able adequately to address, by itself, past findings by the GAO of serious waste. I have chosen to address the single, narrow area of secondary inventory because that is the area where we have fresh information from the GAO, information with which DOD generally concurs.

Now, while $2 billion may not be a large amount compared to the $400 billion authorized in this bill, it is still a lot of taxpayer money, and it is being wasted. We ought to stop it. That is what my amendment seeks to do.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Michigan.

Mr. LEVIN. Madam President, how much time is there on this amendment?

The PRESIDING OFFICER. Thirty minutes, evenly divided.

Mr. LEVIN. Madam President, first I thank and commend the Senator from Iowa for this amendment. It is an amendment which raises a lot of very significant issues about the Department of Defense inventory. It is a subject I had quite a bit to do with many years ago, particularly when we raised issues about the amount of the warehousing that exists in the Department of Defense, the amount of purchases which were made which contributed to that inventory, which was excessive.

We made some progress. This was a number of years ago, but nonetheless we made some progress. I think we actually reduced the number of warehouses at that time by about 40 percent. But it is obvious we still have a problem and we are going to have a greater problem if we do not address it because of the increased size of the Defense budget and the purchases of the Defense Department.

The GAO has issued a report. It is a fairly new report. Frankly, we have not had a chance to even analyze that report. Many years ago, when we took up this subject and had hearings and made some progress on this issue, we had some differences with the GAO over their approach, over the way in which they measured things. I don't know whether that is still a problem because, again, we have just not had a chance to review this report. It is very recent. We have not had a chance to meet with the GAO or the Senator from Iowa and his staff.

If the Senator is willing, I would make a commitment—I know the chairman would join me in this commitment because I have spoken with the chairman about this subject—to look into the GAO report and to do so promptly, to review it, and then to meet with the Senator from Iowa to review it and address those issues he thinks need to be addressed. We will do that promptly. We are not trying to delay it because the Senator has pointed out matters which could save us significant amounts of money.

On the other hand, if we do it wrong, for instance, if we sell things which are excess to inventory which will not be excess a few months from now, if we bring the inventory down—for instance, if we have 2 years of inventory for things we only need a year and a half of, we may not want to sell that extra 6 months; we may want to bring the inventory down to a year and a half.

There are some complications. I have had a chance to talk with our dear friend from Iowa. His heart is absolutely in the right place. His head is in the right place. His staff is in the right place. We want to try to be in the right place with him and join him in this effort and have the opportunity which I have just described to review this GAO report with him and take the appropriate action.

I urge he consider allowing that course to occur and not to press his amendment at this time. I know the chairman of the committee has some thoughts on the subject as well.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, I associate myself with the remarks of my colleague from Michigan.

I say to the Senator from Iowa, really, in a way we appreciate what you have done because you have identified an issue that has been of concern to our committee for some many years. The Armed Services Committee has held hearings and sponsored much of the GAO's best-practices work. But there remain to be done some important aspects of this problem.

DOD has made some progress but much more needs to be done. We recognize that. I want to work with the Senator from Iowa and the Senator from Michigan and other members of the committee to address the inventory management problems at the Defense Department.

I thank the Senator.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I thank both the chairman and the ranking member for their attention, and their responses. I know the Senators and their staffs, on both sides, have worked on this matter going back some years. I appreciate that.

This seems like that whack-a-mole type thing; you keep hitting it and something else pops up. From our side, the Defense Appropriations Subcommittee side, I have been addressing this since 1995. GAO even said here:

> Since 1995, we have reported on imbalances in DOD's inventory, and our current work shows that these imbalances continue to exist.

I know the chairman and ranking member have a lot on their plate. This is a big bill. There is a lot you have to pay attention to. But somehow we just have to get our hands on this.

In response to what Senator LEVIN had said, we found in one of our reports—I am sure the chairman is very familiar with it—where we had at one point 100 years or more of inventory of some items. Of course they are going to be long obsolete before that hundred years is out.

Some of that has been taken care of. I compliment the chairman and ranking member, now and in the past, for attending to that, because a lot of that has been reduced. I compliment you for that.

But we still have one problem here—well, one among others—of the secondary inventory and the fact they keep buying, even though they themselves say they do not need it.

So I appreciate what you said. I know you have not had a chance to take a look at it. I look forward to my staff and your staff working together and maybe coming up with some things so we can get them moving in the right direction.

Mr. WARNER. Madam President, if I might say to my colleague, on a personal note, he and I have reminisced many times how we have been privileged to wear the uniform of our country. I am struck by the hundred years. That parallels the commode scene we had hear some years ago, if the Senator remembers.

People operating in the Department of Defense have good intentions, be they in uniform or civilians. It is their country and their taxpayers' money. What we have to do is provide them with the proper direction when they need it to try to correct these things. But we have always, being military persons ourselves, to remember readiness is foremost. We have to err sometimes on the side of caution to maintain the readiness needed, particularly in today's environment, where unlike when you and I served there was time to get ready for military operations.

World War II basically took a year to get cranked up and going. We don't have that time anymore with these modern weapons and terrorism and the like. We have to be ready because what is on the shelf and what is in inventory is about all the men and women in the Armed Forces have when they have to move out with such swiftness now to address the threats of today.

I thank the Senator, but I just wanted to bring up that one note.

Mr. HARKIN. I appreciate my friend from Virginia mentioning that. That is true. That is why I understand we have to have some of this inventory. You are right, we should err on the side of caution in this area. But with the tremendous buildup we have and the amount

of money we are talking about here, let's face it, big mistakes can be made and things can happen.

I went back one time and I read a lot about the old Truman Commission in World War II that was set up. Here we were, World War II, and we had to respond, as the Senator knows, rapidly at that time. We had to go almost from nothing to build up an Air Force and a Navy and an Army. The enemy was at our gates. But at the same time, the Senate set up a special Committee then under Senator Harry Truman of Missouri. That commission did a number of things. Some people went to jail. Some people paid fines. They saved the taxpayers literally—I don't know if it was billions, at least hundreds of millions of dollars at that time, which would translate into billions at today's inflated levels. They did that in the midst of the Second World War.

I am just saying we need some more oversight, and we need some better accounting practices and inventory control systems.

Maybe the chairman did not hear me when I said earlier, half facetiously, a couple years ago maybe that when we are contracting out we ought to contract out inventory control to Wal-Mart. They don't lose much. They keep track of everything. As the chairman knows, there are some new technologies out there that are coming on line that will allow us to track——

The PRESIDING OFFICER. The time of the Senator from Iowa has expired.

Mr. HARKIN. I ask unanimous consent for a couple more minutes.

Mr. WARNER. There is no objection on this side.

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

Mr. HARKIN. Maybe some of this new technology would be what would help us get more control.

I thank the chairman.

AMENDMENT NO. 774 WITHDRAWN

Madam President, I ask unanimous consent to withdraw my amendment. I look forward to working with the chairman and ranking member to try to get a better handle on this.

Mr. WARNER. We thank our colleague very much.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

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

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

Mr. WARNER. Madam President, parliamentary inquiry: My understanding is that the Bingaman amendment is the order at this point in time.

The PRESIDING OFFICER. That is the next amendment to be considered.

Mr. WARNER. Could that temporarily be set aside for 5 minutes so the Senator may be recognized and then we will return to that?

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

The Senator from Utah.

Mr. BENNETT. Madam President, I thank the distinguished chairman and my friends on the Democratic side for allowing me to make this presentation.

AMENDMENT NO. 776

Mr. BENNETT. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for himself, Mr. REID, and Mr. ALLEN, proposes an amendment numbered 776.

Mr. BENNETT. Madam 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:

(Purpose: To repeal the MTOPS requirement for computer export controls)

At the end of subtitle D of title X, add the following:

SEC. 1039. REPEAL OF MTOPS REQUIREMENT FOR COMPUTER EXPORT CONTROLS.

(a) REPEAL.—Subtitle B of title XII of, and section 3157 of, the National Defense Authorization Act for Fiscal Year 1998 (50 U.S.C. App. 2404 note) are repealed.

(b) CONSULTATION REQUIRED.—Before implementing any regulations relating to an export administration system for high-performance computers, the President shall consult with the following congressional committees:

(1) The Select Committee on Homeland Security, the Committee on Armed Services, and the Committee on International Relations of the House of Representatives.

(2) The Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(c) REPORT.—Not later than 30 days after implementing any regulations described in subsection (b), the President shall submit to Congress a report that—

(1) identifies the functions of the Secretary of Commerce, Secretary of Defense, Secretary of Energy, Secretary of State, Secretary of Homeland Security, and any other relevant national security or intelligence agencies under the export administration system embraced by those regulations; and

(2) explains how the export administration system will effectively advance the national security objectives of the United States.

Mr. BENNETT. Madam President, this amendment deals with the subject which I have dealt with before. It has to do with the National Defense Authorization Act which requires the President to use as a measure for computer performance in setting export control thresholds a measurement known as MTOPS, which stands for millions of theoretical operations per second.

The interesting thing about MTOPS is that, like Topsy, which sounds like they are named after, they are constantly growing, and the level of MTOPS keeps growing from 4,000 to 8,000 to 16,000 to 56,000, and on and on. Every time we set an MTOPS level as saying we can control the exportation of supercomputers by insisting that this level not be exceeded, technology catches up. Quite literally, the last time we dealt with this, someone could go down to Toys-R-Us and buy a Sony PlayStation and have a device with more MTOPS in it than we were allowing to be exported in the name of protecting supercomputers from falling into improper hands.

This matter has been discussed at some length. It has been decided and confirmed by the GAO that the use of MTOPS as the measure for controlling exports in this area is not productive and that MTOPS no longer presents any kind of logical measure of what has happened. Nonetheless, it is written into the law that MTOPS should remain as our present measure.

My amendment would repeal that requirement in the law. It is supported by virtually everyone who understands the reality of where we are in the high-tech industry.

I would go on to debate the amendment at greater length and outline its need, but I understand from conversations with the chairman's staff and with the Parliamentarian that this amendment would not be considered relevant to this bill at this time. For that reason, I will withdraw the amendment.

Mr. REID. Madam President, will the Senator yield?

Mr. BENNETT. I am happy to yield.

Mr. REID. I appreciate very much the Senator offering this amendment. He and I have worked on this matter through several Congresses. It is an extremely important amendment. It is unfortunate that it is not going to be relevant to this matter. I hope there is some way during this Congress that we can expedite this most important amendment which the Senator is talking about.

Talking about job creation, this is a way to create jobs—get rid of this arbitrary rule that at one time may have had a little bit of reason but now has absolutely no reason to be on the statutes of this country.

Our current MTOPS metric measure which is used to regulate the export of U.S.-made technology hardware is outdated, hurts our high-technology industry, and should be better crafted to address our Nation's specific security concerns.

If U.S. companies are to effectively compete outside the United States in foreign markets, the current MTOPS metric measure must be repealed.

Once repealed, the current MTOPS measure will remain applicable to all export controls until the President, after consultation with the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Banking, Housing, and Urban Affairs of the Senate has taken into consideration all relevant and necessary security concerns to ensure that U.S.-developed technology cannot be abused for the purposes of tyranny and terrorism.

The President shall also consult with the Secretary of Commerce, Secretary of Defense, Secretary of Energy, Secretary of State, Secretary of Homeland Security, and any other relevant national security or intelligence agency under the export administration system affected by the MTOPS provisions.

We must act now to protect our status as world leaders in technology development.

In the interests of national security and economic productivity, we must clear a path to reform the current MTOPS metric measure that is unnecessarily restraining our high-technology industry.

AMENDMENT NO. 776 WITHDRAWN

Mr. BENNETT. Madam President, I thank my friend from Nevada. I will tell him, there is a way this can be done this Congress. It is my understanding an attempt will be made in the House to place this amendment in the bill in the House where it does not run into the relevancy difficulty I ran into here today.

I would hope our chairman and ranking member, when they get to conference, if they find the language in the bill, would feel so disposed to accept it as it becomes a conferenceable item.

Madam President, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The Senator from New Mexico.

AMENDMENT NO. 765

(Purpose: To require a specific authorization of Congress before the conduct of the design, development, or deployment of hit-to-kill ballistic missile defense interceptors)

Mr. BINGAMAN. Madam President, I call up amendment No. 765 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] for himself, Mr. DORGAN, Mr. REED, and Mr. BIDEN, proposes an amendment numbered 765:

At the end of subtitle C of title II, add the following:

SEC. 225. REQUIREMENT FOR SPECIFIC AUTHORIZATION OF CONGRESS FOR DESIGN, DEVELOPMENT, OR DEPLOYMENT OF HIT-TO-KILL BALLISTIC MISSILE INTERCEPTORS.

No amount authorized to be appropriated by this Act or any other Act for research, development, test, and evaluation, Defense-wide, and available for Ballistic Missile Defense Systems Interceptors (PE 060886C), may be obligated or expended to design, develop, or deploy hit-to-kill interceptors or other weapons for placement in space unless specifically authorized by Congress.

Mr. BINGAMAN. Madam President, I offer this amendment on behalf of myself, Senator DORGAN, Senator REED, and Senator BIDEN. This is an amendment I hope can be approved to clarify that this Congress, this Senate, does not intend to be authorizing—by this bill, the language we have before us here in the legislation—does not intend to be authorizing the weaponization of space.

The amendment proposes to require specific authorization from Congress if we are going to proceed to design or develop or deploy hit-to-kill interceptors or other weapons we intend to have placed in space.

This is an issue that has not had a great deal of debate in the Senate in recent years. In fact, I think we discussed it some when the former President Bush—not this President Bush, but the former President Bush—had his proposal for the program called Brilliant Pebbles. But there has not been a lot of discussion in the last few years. I do not believe this issue was addressed, either, in the markup of the Defense authorization bill in the Armed Services Committee. In my view, it is a very important issue.

Specifically, within this program there is a new start for fiscal year 2004 that is titled: ''Space-Based Interceptor Test Bed.'' This program proposes to develop a test bed in outer space consisting of several satellites that would deploy kinetic energy rounds to strike missiles in their boost phase. They also, of course, could be used to strike satellites as well.

I have great concern with this whole proposal. As all colleagues know, as a nation this President chose to withdraw from the ABM treaty. Now, the ABM treaty did contain a prohibition against deploying antiballistic missile systems in space. As I see this new start that is in the bill the administration has proposed to the Congress, we really are seeing here a follow-on to our decision to withdraw from the ABM treaty. In my view, it sends a very unfortunate signal to other countries—to China, to Russia, to North Korea, to other countries—that might have capability to follow our lead.

It essentially sends them the signal that we are beginning the process of weaponizing space. This is not a signal I think this Congress or this administration should be sending.

I note we have a longstanding policy, a policy that has been in place since President Eisenhower was in the White House, not to put weapons in space. There is a crucial distinction I want to make here between using space for military purposes and actually putting weapons in space. We do use space for military purposes. We use space for reconnaissance. We use space to gather information in a great variety of ways to support our defense needs. But we have never stepped over the threshold and actually put weapons in space. I think for us to choose to do so is a very important decision which should not be taken lightly and should not be taken without great care.

This program that is in the bill contains a seed element which I think should concern all Members. Under the Department of Defense so-called Spiral Development Policy, initial test beds—which is what this provision calls for—but initial test beds, such as the ground-based test bed at Fort Greely, are seen as being used simultaneously, at least for partial deployment of systems. It is my fear a similar result could happen with regard to this space-based test bed; that is, the initial fielded satellites would be converted, like the ground system at Fort Greely, to a fielded weapons system in space.

For that reason, I think it is important we make clear—we in the Congress make clear—we do not want that to happen, we do not want funds in this bill used for design and development and deployment of weapons in space unless Congress focuses on the issue and actually authorizes that action to take place.

There is a great deal I could point to here that elaborates on what I have been saying. I think the main point I want to make, again, is I do not believe most Americans support the notion that the United States should become the first country to deploy weapons in space. I do not think a military need has been demonstrated. In particular, I do not think the administration and the Congress should do so without a thorough discussion and debate about the issue, so that we, in fact, know what we are doing and the implications of what we are doing.

This is a very large step for us to take, to become the first nation to proceed to put weapons in space, and I do not think this is something that should be done lightly. This decision is one I think we will hear about for a very long time, and I think it will have repercussions for a very long time. I think this amendment I have proposed tries to make it clear we do not want to make that decision today, that the Congress has not debated this adequately, that the Armed Services Committee has not debated this adequately, and we are not prepared today to authorize—or at least we have not as yet, in my view, taken the step of specifically authorizing the design and development and deployment of weapons in space.

Mr. President, how much time remains?

The PRESIDING OFFICER (Mr. CORNYN). EIGHT MINUTES REMAIN.

Mr. BINGAMAN. Mr. President, let me just talk about one other aspect. The Pentagon's Missile Defense Agency, which oversees missile defense research and development, did an interview in February talking about their so-called space-based test bed, which is what I am addressing my amendment to here.

The thrust of what they described in that interview was they intend to field satellites armed with multiple hit-to-kill interceptors that are capable of destroying a ballistic missile through a high-speed collision shortly after it is launched.

This might be something we decide we have to do, but, to my knowledge, that debate has not occurred in Congress, and I do not want to see us proceeding down that road without the Congress having focused on it, having actually specifically authorized it.

Therefore, my amendment tries to clarify that is, in fact, what is required before we can proceed down that road.

There is funding also in this same program element, and that is the PE 060886C. There is funding in there for the ground-based interceptors, for their development.

Certainly that is a decision we have made as a country, and I am not trying to revisit that. I do think we go a substantial additional step when we decide we are also going to be designing, developing, and deploying weapons in space. We will do so. We will begin that process by setting up this so-called test bed in space. Those satellites will be the beginning of that process.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Virginia.

Mr. WARNER. It is my understanding I have 15 minutes under my control.

The PRESIDING OFFICER. The Senator is correct.

Mr. WARNER. I wonder if I may ask my colleague a question or two. For many years you served on the Armed Services Committee. You have a complete familiarity as to how we address issues. My recollection—and I don't think it is to be disputed—of the markup in the subcommittee is, when we looked at this line of funding, no one on your side of the aisle or anyone else raised an issue. We went to full markup, and no one raised an issue about it.

Essentially you are coming in, which you have a perfect right to do, but you are coming in to kill a program. Am I not correct, this amendment kills the program?

Mr. BINGAMAN. Let me respond that I am certainly not trying to kill the development of any of the program that is ground based. I am saying, however, that we should not proceed to establish, to design, develop, and deploy a space-based weapons capability absent some debate about it.

Mr. WARNER. Mr. President, that is quite clear.

Is the answer to my question, yes, you are trying to kill the initiation of an element that could lead to space-based weapons? Isn't that correct?

Mr. BINGAMAN. That is correct. I think that should not be done without much more deliberation than we have given it.

Mr. WARNER. I just point out that on your side of the aisle, participating actively in markup in the full committee, there was no effort to examine it.

The next question I ask my colleague: Are you aware how much money the taxpayers of this Nation put in previous programs for space-based weaponry prior to when President Clinton—I don't say this in a critical way; it is just a fact way—determined that we would not put another dollar in space based?

Mr. BINGAMAN. Mr. President, in response to my colleague's question, I am aware that we put substantial funding in and most of that funding was for research.

Mr. WARNER. That is correct.

Mr. BINGAMAN. There is nothing in my amendment that would interfere with research. What I am trying to head off is the actual design and development and deployment of space-based weapons as part of this new program start. But research has proceeded. We have funded it at a high level. I have supported that.

Mr. WARNER. The Senator is on my time, and he is kind of getting into it a little bit. I need a few minutes here.

We spent, as a nation, $1.8 billion on space-based intercepts from 1985 to 1993. This is for $14 million to go in and take a look at what has taken place in years prior thereto, by virtue of an expenditure of $1.8 billion, to determine the feasibility of whether this concept should be resumed. Essentially you are stopping us from even taking a look at this enormous investment which has been expended to determine whether we should once again begin in a substantial way to look at space-based interceptors. That is what is before the Senate, $14 million to go back and look at a program of $1.8 billion. It is for that reason that we vigorously oppose the amendment.

I yield the floor at this time. I see the chairman of the subcommittee.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. How much time does each side have?

Mr. WARNER. Each side had 15 minutes. I am not sure for which side the distinguished ranking member is speaking.

The PRESIDING OFFICER. The sponsor has 5 minutes 43 seconds remaining.

Mr. LEVIN. How much time does the sponsor have remaining?

The PRESIDING OFFICER. Five minutes 43 seconds.

Mr. LEVIN. And the opposition?

The PRESIDING OFFICER. Ten and a half minutes.

Who yields time?

Mr. WARNER. I think it is important that we hear from the ranking member because I have asked a question. We did not address this at all in the subcommittee or full committee markup. I presumed, since it was in our bill—I say respectfully to my colleague—I believe he was here to support the bill as written. I come at somewhat of a surprise now on exactly where my distinguished colleague from Michigan is on this amendment.

Mr. LEVIN. Well, I certainly am not committed to the bill as written because there are a number of provisions in the bill that I opposed in committee and that I have opposed on the floor.

Mr. WARNER. But there was no opposition in the course of the markup, either in subcommittee or full committee.

Mr. LEVIN. The chairman is correct. This issue was not brought to my attention until the floor. But there are a number of issues which are brought to our attention for the first time on the floor. I hope any of us can support those issues when they are brought to the floor. We ought to all feel free to do that.

Mr. WARNER. I will save this debate for another day.

I yield the floor.

The PRESIDING OFFICER. Who yields time to the Senator from Colorado?

Mr. WARNER. I yield.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, as chairman of the Strategic Subcommittee, this is an issue on which we have held discussions. We have put together the provisions that deal with many of the modernization elements of the defense and Armed Forces of the country. This is an amendment that did not get brought forward during deliberation in the subcommittee, nor deliberation in the Armed Services Committee, as far as I recall.

I am concerned about continued efforts on the floor of the Senate to stymie our reaching out to new technology. We have had an amendment concerning low-yield nuclear weapons that allows for a study to think about what our alternatives might be. We have had amendments here concerning robust nuclear earth penetrators, just to study the concept.

Here is another concept that the committee has decided we should study. It seems to me that in a modern military, these are things we should be looking at. Things are changing.

I commend the President's Secretary of Defense. He is trying to modernize our military forces, get them to work together on the battlefield more than we ever had before. We saw that happen in Iraq. These are all issues that are part of a joint force effort.

I hope we can defeat the amendment. I oppose the Bingaman amendment. Again, it prohibits us even taking the time to study the concept. After you do the study, you list the pros and cons and then decide if this is something you want to move forward, whether it is feasible. We need to gather facts on actual costs. We may decide, after doing the study, that it is too expensive. On the other hand, we may do the study and look at the threats facing the country and say: This is something we need to be doing.

It is foolhardy that we have amendments that continually keep coming up that don't allow us to study our alternatives. We need to have the studies. We need to be thinking about what kind of threats and what we want the military to look like 10, 20, 30 years down the road.

I hope other Members of the Senate will join me in opposing this amendment.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I wonder if I can get the attention of the Senator from New Mexico, and Senator ALLARD as well. I ask the Senator from New Mexico to yield me 1 minute.

Mr. BINGAMAN. I yield to the Senator as much time as he needs.

Mr. LEVIN. The Senator from——

Mr. WARNER. Mr. President, just a minute. In a conscientious effort to resolve this, I ask unanimous consent that each side be given another 5 minutes.

Mr. REID. No objection.

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

Mr. LEVIN. The Senator from Virginia and the Senator from Colorado have raised a point that there has been a significant amount of money that has been invested in this item, and there should not be a prohibition on reviewing the work, studying the work, on doing research in this area. As I understand the language in the amendment of the Senator from New Mexico, it is not intended to prevent studies or, indeed, research. It is intended to say that before you get to the design stage, which is beyond research and beyond studies, you come back for specific authorization.

So the point being made is, if the Senator from New Mexico is not intending to prevent a review of all the work, which was done apparently in the 1980s, and is not intending to prevent studies or even research under 6.0, 6.1, and 6.2, I wonder whether the Senator from New Mexico would be willing to make that clear and explicit in that amendment, if that addresses satisfactorily the issue raised by the Senator from Virginia.

I have just talked to the Senator from New Mexico. There is no intent in the language to prevent a study of previous work. All this language says is that before you begin the design stage—that is beyond pure research—before you begin the design and development stage, come back and get specific authority. I don't think that is what is intended to be done with this money this year, from what the chairman and Senator ALLARD have said.

So I ask the question of the Senator from New Mexico whether the Senator would be willing to add language to his amendment that nothing in here is intended to prevent the study of the hit-to-kill capability, or previous analyses, or research prior to the design stage?

Mr. BINGAMAN. Mr. President, in response to my colleague's question, I think it is very clear what my amendment is trying to do, that the Department of Defense cannot obligate or expend funds to design, develop, or deploy hit-to-kill interceptors or other weapons for placement in space, unless they get specific authorization.

So if they want to do more research or go back and look at previously performed research or analyses, certainly I have no problem with that. I think that is——

Mr. WARNER. I draw the Senator's attention to the first words:

No amount authorized to be appropriated by this Act for research. . . .

It is right in there.

Mr. BINGAMAN. I think the operative language is on page 2, where I say what this sentence is intended to mean: that no amount authorized to be appropriated by this act for research, development, test, and evaluation may be expended for design, development, or the deployment of these types of weapons in space.

I think I have made it very clear we are trying to head off the use of funds for designing weapons in space until Congress has a chance to debate this issue and until there is a specific authorization required.

Mr. WARNER. Mr. President, I think there is some expression by our colleague to amend the amendment. I take that in good faith. I believe we need a little time to examine this proposal. The chairman of the subcommittee, the Senator from Colorado, is prepared to sit down with the Senator and see what we might be able to do to bridge the gap because this is essentially another vote, as it is now written, to stop the program cold, to put in a ban. We have been through a series of votes on that now and, thus far, we have prevailed to not let bans be put in place, and here is another one coming up.

So, in good faith, we will take a look at such amendments that the Senator may wish. Therefore, I simply ask unanimous consent that this amendment be laid aside for a period of time.

Mr. BINGAMAN. Prior to that, I yield 3 minutes to the Senator from Rhode Island. He has been waiting to speak on this general issue, if that is possible.

Mr. WARNER. We have no objection if the Senator takes some time to speak.

Mr. BINGAMAN. We can postpone a vote until we visit.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I want to underscore the major issue that the Senator from New Mexico is raising and that is the weaponization of space. We have talked today earlier about different nuclear programs and should we have low-yield weapons bans or robust nuclear earth penetrator bans. But the realm of nuclear weaponry has been upon us now for five decades.

To date, we have been successful in preventing weapons from being deployed in space. So this is a completely different issue. This is not the issue of shall we do more of what we have been doing for 50 years. This is a threshold question: Do we want to introduce weapons into space? And will this introduction come surreptitiously, innocuously by research programs that put weapons in space for a test bed without debate in the U.S. Congress on behalf of the American people and a clear decision?

I think that is the Senator's amendment. He has identified programmatic funding that could be stretched to inch our way—perhaps through the back door, if you will—into placing weapons in space. I think that is such a critical and important issue that we not only have to debate it but we should decide it, not scientists and technologists in the Department of Defense. I cannot think of any scientist who would not like more permission to study more things.

So I urge, hopefully, the resolution of this amendment. If it is not resolved and comes to a vote, I hope we can support the Senator from New Mexico.

I yield back my time.

Mr. LEVIN. 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. 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.

Mr. REID. Mr. President, I have spoken to the two managers of the bill. They are both in agreement that we could set aside the Bingaman amendment and move to the next amendment which would be offered, and that is by Senator DAYTON. Senator DAYTON is offering an amendment on buy America. He has agreed to 30 minutes equally divided. We would, of course, have the normal agreement that no second-degree amendments will be offered.

So I ask unanimous consent that we set aside Bingaman and move now to the Dayton amendment, and that no second-degree amendments be in order prior to the vote on the matter.

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

Mr. REID. It would be in the usual form in relation to any language that might be stricken.

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

The Senator from Minnesota.

AMENDMENT NO. 725

Mr. DAYTON. Mr. President, I call up amendment No. 725.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota (Mr. DAYTON), for himself, and Mr. FEINGOLD, proposes an amendment No. 725.

Mr. DAYTON. 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:

(Purpose: To strike section 833, relating to waiver authority for domestic source or content requirements)

Strike section 833.

Mr. DAYTON. I ask unanimous consent that the Senator from Wisconsin, Mr. FEINGOLD, be added as a cosponsor to this amendment.

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

Mr. REID. Mr. President, will the Senator from Minnesota yield?

Mr. DAYTON. I yield.

Mr. REID. Mr. President, Senator WARNER, who has been so heavily engaged in this legislation, allowed me to go forward with a unanimous consent request. However, it was brought to our attention that there is a Senator who wishes to offer a second-degree amendment, or might want to offer a second-degree amendment to this matter. I have consent that we go forward with the Dayton amendment but we would remove the time agreement.

Mr. WARNER. And recognize that there could be a second degree.

Mr. REID. That is right. If that does not come to be, we will worry about a time agreement at a subsequent time. The agreement is we are setting aside Bingaman and moving to Dayton.

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

Mr. REID. Mr. President, I appreciate the cooperation of the Senator from Minnesota.

Mr. DAYTON. I know the Senator from Virginia and the Senator from Nevada are working together on this and I am in good hands.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I call up this amendment and point out that at a time when millions of Americans are unemployed, looking for jobs, unable to find jobs, and are suffering terrible emotional and financial hardships as a result, it is astonishing to me that the administration would seek in this bill to move more American jobs to other countries. It is astonishing, but given this administration, it is not surprising. It is well on its way to becoming the most anti-jobs administration in our Nation's history.

Since President Bush took office 2½ years ago, 2.7 million jobs have been lost throughout the United States of America. In the first 3 months of this year alone, 500,000 jobs disappeared. The only idea for economic stimulus that the administration has is to cut taxes for the Americans who are already rich, whether they work or not.

In this bill, the administration wants to gut the ''buy American,'' which is an existing law passed by the Congress in 1933, which for the last 70 years, under Republican administrations, Democratic administrations, has been a policy of this Congress—that we will attempt to buy American.

The Berry amendment was enacted in 1941, at the onset of World War II, applying specifically to the Department of Defense procurements. It says, in pertinent part:

> *Provided:* That no part of this or any other appropriation contained in this Act shall be available for the procurement of any article of food or clothing not grown or produced in the United States or its possessions, except to the extent that the head of the department concerned shall determine that articles of food or clothing grown or produced in the United States or its possessions cannot be procured of satisfactory quality and in sufficient quantities and at reasonable prices as when needed. . . .

That is not unreasonable. That is not onerous. It says you must buy products grown or made or manufactured in the United States except when the Secretary of Defense will determine, on his sole authority, that it cannot be procured of satisfactory quality or sufficient times at reasonable prices as and when needed. That is not even a ''buy American'' requirement but ''try to buy American'' requirement, try to buy American products.

This administration does not even want to try. They added into this committee bill section 833 which, in pertinent part, says:

> Waiver of domestic source or content requirements
>
> (a) AUTHORITY—Except as provided in subsection (f), the Secretary of Defense may waive the application of any domestic source requirement or domestic content requirement referred to in subsection (b) and thereabout authorize the procurement of items that are grown, reprocessed, reused, produced, or manufactured—
>
> (1) in a foreign country that has a reciprocal defense procurement memorandum or agreement with the United States.

That is 21 foreign countries. And it is not even so important that the Secretary himself or herself has to make that determination.

It grants later that:

> (A) may not be delegated to any officer or employee other than the Under Secretary of Defense for Acquisition Technology and Logistics.

If this bill passes with the current language, there will be 21 other countries around the world which can be given equal priority as the United States of America for contracts that provide jobs which are being paid for by American tax dollars. Those dollars had been appropriated and they will be spent on the U.S. Armed Forces, to clothe them, feed them, and equip them with the best, which is what they deserve because they are the best young men and women in the world and they proved their courage, their valor, and skills once again in Iraq, as they have before so many times and as they will probably be called upon to do again. They deserve the best. They should get the best. Congress has made clear in existing law that they will get the best and they will get it when they need it.

Current law says whenever it is reasonably possible, however, to supply those needs with goods and products and equipment that are produced in this country, using materials that are made, where feasible, in this country, then do so, recognizing that will provide an additional public benefit for those expenditures of tax dollars of creating or saving jobs for Americans. If it is not reasonably possible, the law says, then don't, but at least try to buy American. At least try to spend public funds in the United States rather than in other countries. At least try to benefit the U.S. economy rather than another nation. At least care enough to try.

For 70 years, every administration has been willing to make that effort. But not this administration, evidently, because at their request the language was inserted that says the Department of Defense does not even have to try; they can buy in the United States or they can buy in 21 other foreign countries, and the Secretary of Defense does not even need to be bothered with those decisions. They evidently do not consider it important enough to require him to do so. An Under Secretary can handle it. These are decisions that will decide whether some Americans keep their jobs and get new jobs. And they say it is not that important.

My colleagues, that is the question before the Senate today. Should we just give up at this point in time, right now especially, a 70-year policy that creates or saves American jobs for American citizens, when it is reasonably possible to do so? Or, no, no, it just really does not matter?

It matters a great deal to millions of Americans who are looking for work today. It matters a great deal to their husbands and their wives and their children. It matters a great deal to me, which is why I brought this amendment forward. If it matters to the Senate today, Members will support my amendment. I urge my colleagues to do so.

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

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

Mr. COCHRAN. Mr. President, I commend President Bush for his leadership in invigorating our Nation's missile defense programs. Just yesterday, the President publicly released his vision and guidance to provide for a ballistic missile defense system. National Security Policy Directive 23 formalizes the administration's missile defense policy, and it is consistent with the National Missile Defense Act of 1999, which is now Public Law 106–38. It was adopted during the 106th Congress.

The National Missile Defense Act stated:

> It is the policy of the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate) with funding subject to the annual authorization of appropriation and the annual appropriation of funds for National Missile Defense.

With the President's leadership, our Nation is now moving forward to provide the most technologically feasible defenses as soon as possible.

I commend the chairman of the Armed Services Committee and those who have worked with him to craft this authorization bill. It carries forward and builds upon the need for testing,

development, and deployment of adequate missile defense systems to protect not only our homeland but our forces in the field and our interests around the world.

Today, I am pleased to report that our national resolve and technological superiority are being brought to bear in ways not possible under the restrictions of the Anti-Ballistic Missile Treaty.

For the first time, our missile defense research and development efforts are being integrated at all levels. As a result, our Nation will benefit from deployed missile defense capabilities, while we continue to test and field technologies in logical increments.

We are moving forward with one integrated program consisting of several elements rather than separate programs linked in name only. In short, the evolutionary and integrated approach to research and development will allow defensive capabilities to be fielded years before they otherwise might have.

Systems we are pursuing are capable of intercepting missiles throughout the predicted flight path of various types of ballistic missiles. The threat of these missiles to our Nation, to our deployed Armed Forces, and to our allies exists today. It is prudent to continue with the immediate testing and fielding of the variety of systems needed to counter these challenging threats.

Testing to date has proven to be increasingly promising. Next year, ground-based interceptors in Alaska and California will be activated and will serve as a foundation upon which continental defenses may later be expanded. Testing locations along a Pacific test-bed will allow for near-term defense against rogue threats.

We will continue to develop and test incrementally. The plan is to field systems as we go and build upon capabilities as they are tested and proven.

Ground- and sea-based interceptors, additional Patriot, PAC–3, units, and sensors based on land, at sea, and in space are planned for operational use in 2004 and 2005. We will work with our allies to upgrade key early-warning radars to help enhance capabilities.

Equally promising systems will be deployable much sooner, due to the administration's incorporation of an aggressive research, development, and testing regimen.

In developing defensive capabilities along the land, sea, air, and space spectrum, our missile defense system will help protect our homeland and international interests, as well as contribute to the defense of our Allies.

The President has made clear that defending the American people against the threats to our homeland and our sovereignty is the administration's highest priority. I commend the President for this leadership.

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

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

Mr. BINGAMAN. Madam President, what is the business before the Senate?

The PRESIDING OFFICER. The pending business is the Dayton amendment.

Mr. BINGAMAN. I ask unanimous consent that the amendment be set aside and that we return to the amendment I offered, No. 765.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Reserving the right to object, how long will it take?

Mr. ALLARD. About 2 minutes.

Mr. MCCAIN. I do not object.

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

AMENDMENT NO. 765, AS MODIFIED

Mr. BINGAMAN. Madam President, I send a modification of the amendment to the desk.

The PRESIDING OFFICER. The Senator has the right to modify his own amendment. The amendment is so modified.

The amendment, as modified, is as follows:

At the end of subtitle C of title II, add the following:

SEC. 225. REQUIREMENT FOR SPECIFIC AUTHORIZATION OF CONGRESS FOR DESIGN, DEVELOPMENT, OR DEPLOYMENT OF HIT-TO-KILL BALLISTIC MISSILE INTERCEPTORS.

(a) No amount authorized to be appropriated by this Act for research, development, test, and evaluation, Defense-wide, and available for Ballistic Missile Defense System Interceptors (PE 060886C), may be obligated or expended to design, develop, or deploy hit-to-kill interceptors or other weapons for placement in space unless specifically authorized by Congress.

(b) Of the amounts authorized to be appropriated for fiscal year 2004 for Ballistic Missile Defense System Interceptors, $14,000,000 is available for research and concept definition for the space based test bed.

Mr. BINGAMAN. Madam President, let me explain to my colleagues what we have done, both working with Senator LEVIN and Senator ALLARD and Senator WARNER and the various staff who have worked on this issue.

First, let me describe very briefly what my amendment does. The language of the amendment I offered originally was fairly clear in that we were trying to restrict the use of funds in a particular program element so that they could not be used, obligated, or expended to design, develop, or deploy hit-to-kill interceptors or other weapons for placement in space unless there was specific authorization by Congress. That is an important provision to try to get into the law. And in order to do that, I have agreed to a modification of that which Senator ALLARD recommended.

That modification would add a subsection (b) that would say:

Of the amounts authorized to be appropriated for fiscal year 2004 for Ballistic Missile Defense System Interceptors, $14,000,000 is available for research and concept definition for the space based test bed.

As I see the effect of this modified amendment, the general provision would be agreed to that there cannot be funds used for either design or development or deployment of these weapons in space out of these funds, with the only exception being that $14 million is available for research and concept definition with regard to this space-based test bed. That is an acceptable alteration and one that still keeps intact the basic provision I intended with my amendment. On that basis, I have agreed to modify it.

I yield to Senator ALLARD. I know he wants to describe the amendment.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. First, I thank the sponsor of the amendment, Senator BINGAMAN, for working in this compromise language. We do maintain, out of the ballistic missile defense system interceptors account, we have the $14 million kept available for research and concept definition for the space-based test bed. I thank Senator LEVIN and his contribution to help us work out the compromise, as well as the chairman, Senator WARNER.

I am prepared to yield back the remainder of my time. The other side is prepared to yield back the remainder of their time. Then we are ready to voice vote.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 765, as modified.

The amendment (No. 765), as modified, was agreed to.

Mr. BINGAMAN. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 783 TO AMENDMENT NO. 725

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I send a second-degree 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 Arizona [Mr. MCCAIN] proposes an amendment numbered 783 to the language proposed to be stricken by amendment No. 725.

Mr. MCCAIN. Madam 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:

(Purpose: To propose the insertion of matter in lieu of the matter proposed to be stricken)

In lieu of the matter proposed to be stricken, insert the following:

SEC. 833. WAIVER AUTHORITY FOR DOMESTIC SOURCE OR CONTENT REQUIREMENTS.

(a) AUTHORITY.—Subchapter V of chapter 148 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2539c. Waiver of domestic source or content requirements

''(a) AUTHORITY.—Except as provided in subsection (f), the Secretary of Defense may waive the application of any domestic source requirement or domestic content requirement referred to in subsection (b) and thereby authorize the procurement of items that are grown, reprocessed, reused, produced, or manufactured—

''(1) in a foreign country that has a Declaration of Principles with the United States;

''(2) in a foreign country that has a Declaration of Principles with the United States substantially from components and materials grown, reprocessed, reused, produced, or manufactured in the United States or any foreign country that has a Declaration of Principles with the United States; or

''(3) in the United States substantially from components and materials grown, reprocessed, reused, produced, or manufactured in the United States or any foreign country that has a Declaration of Principles with the United States.

''(b) COVERED REQUIREMENTS.—For purposes of this section:

''(1) A domestic source requirement is any requirement under law that the Department of Defense satisfy its requirements for an item by procuring an item that is grown, reprocessed, reused, produced, or manufactured in the United States or by a manufacturer that is a part of the national technology and industrial base (as defined in section 2500(1) of this title).

''(2) A domestic content requirement is any requirement under law that the Department of Defense satisfy its requirements for an item by procuring an item produced or manufactured partly or wholly from components and materials grown, reprocessed, reused, produced, or manufactured in the United States.

''(c) APPLICABILITY.—The authority of the Secretary to waive the application of a domestic source or content requirements under subsection (a) applies to the procurement of items for which the Secretary of Defense determines that—

''(1) application of the requirement would impede the reciprocal procurement of defense items under a Declaration of Principles with the United States; and

''(2) such country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

''(d) LIMITATION ON DELEGATION.—The authority of the Secretary to waive the application of domestic source or content requirements under subsection (a) may not be delegated to any officer or employee other than the Under Secretary of Defense for Acquisition, Technology and Logistics.

''(e) CONSULTATIONS.—The Secretary may grant a waiver of the application of a domestic source or content requirement under subsection (a) only after consultation with the United States Trade Representative, the Secretary of Commerce, and the Secretary of State.

''(f) LAWS NOT WAIVABLE.—The Secretary of Defense may not exercise the authority under subsection (a) to waive any domestic source or content requirement contained in any of the following laws:

''(1) The Small Business Act (15 U.S.C. 631 et seq.).

''(2) The Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

''(3) Sections 7309 and 7310 of this title.

''(4) Section 2533a of this title.

''(g) RELATIONSHIP TO OTHER WAIVER AUTHORITY.—The authority under subsection (a) to waive a domestic source requirement or domestic content requirement is in addition to any other authority to waive such requirement.

''(h) CONSTRUCTION WITH RESPECT TO LATER ENACTED LAWS.—This section may not be construed as being inapplicable to a domestic source requirement or domestic content requirement that is set forth in a law enacted after the enactment of this section solely on the basis of the later enactment.

''(i) DECLARATION OF PRINCIPLES.—(1) In this section, the term 'Declaration of Principles' means a written understanding between the Department of Defense and its counterpart in a foreign country signifying a cooperative relationship between the Department and its counterpart to standardize or make interoperable defense equipment used by the armed forces and the armed forces of the foreign country across a broad spectrum of defense activities, including—

''(A) harmonization of military requirements and acquisition processes;

''(B) security of supply;

''(C) export procedures;

''(D) security of information;

''(E) ownership and corporate governance;

''(F) research and development;

''(G) flow of technical information; and

''(H) defense trade.

''(2) A Declaration of Principles is underpinned by a memorandum of understanding or other agreement providing for the reciprocal procurement of defense items between the United States and the foreign country concerned without unfair discrimination in accordance with section 2531 of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 2539b the following new item:

''2539c. Waiver of domestic source or content requirements.''.

Mr. MCCAIN. Madam President, this amendment narrows the numbers of countries to six that would be eligible under the provisions of the bill and would modify the pending amendment to remove the restrictions that would be imposed by the pending amendment at least in the case of six nations which are our closest allies.

Last week we passed an AIDS bill through the Senate, and there were numerous amendments. One of them was a very interesting amendment because it basically protected an industry in the United States of America, thereby causing AIDS drugs to be only available at much higher prices, which then had the obvious effect of reducing the number of people who will be treated for AIDS. I forget the vote. I think it was 54 something to 40 something.

By protecting a major American industry, the pharmaceutical industry—in the estimates of some—hundreds of thousands if not millions of people will not be able to obtain a cure for AIDS because the drug money is obviously finite.

I was embarrassed by that. I think the Senator from Minnesota voted with the Senator from Massachusetts, Mr. KENNEDY, in his amendment of which I was a cosponsor. Basically what we are doing now is to set up protection for other industries—primarily, the defense industries in the United States—by prohibiting the United States from purchasing military equipment that is manufactured in other countries which is the effect of the Dayton amendment. It is rather remarkable because we just came out of a conflict from which we suffered Americans dead and wounded. One would think that the priority should be not where the equipment is manufactured, whether it be in the United States or England, Great Britain, one of our closest and most steadfast allies, a friend whose men and women fought alongside of ours, but the question should be, What kind of equipment can best secure victory as quickly as possible with a minimum of casualties?

Believe it or not, there is equipment that is manufactured in other countries which is superior to our own—defense equipment—not many, because there is a tremendous imbalance between the amount and kinds of equipment that is purchased by our NATO Allies as opposed to the equipment that is purchased by the United States from our NATO Allies. But there still is some. For example, body armor. Body armor is used by the police departments, border patrol, and many law enforcement agencies, but not by the American military, because it is prohibited from doing so. Yet anyone who compares that manufactured in the U.S. to that manufactured in the Netherlands will testify it is superior equipment.

What is our priority here in the Dayton amendment? Is the priority to protect an American industry, and not allow our closest allies and friends to compete to sell their products, their defense equipment, to the United States of America, as we do in their countries? Everything from F–16s, to tanks, to incredible amounts of military equipment, because of our superiority, is purchased by our NATO allies, but we are going to be prohibited from purchasing any of theirs even if, in the judgment of the men and women in the military who test these things and make the judgments, and the Secretary of Defense—we are not going to buy it even if it is better equipment because we want to protect an industry in the United States of America? We have seen this protectionism going on here in the textile industry, even though the Caribbean countries are decimated because they cannot export their product to the United States.

Here we are talking about the lives of the men and women in the military. Can we not at least allow our military to look at equipment made by our closest allies to see if it is superior; that we might want to purchase it just as they purchase massive amounts of military equipment from us? Is the Senator from Minnesota—who, unfortunately, is not on the floor to respond—more interested in protecting an industry or more interested in protecting the lives of the men and women

fighting in the military? Don't they deserve the very best equipment we can procure? I am sorry, you cannot have the following equipment which is superior to that made in Minnesota because we want an industry in Minnesota to be protected. I don't get it. Frankly, neither will the men and women in the military who are unable to function in the most effective fashion if they are deprived of the ability to procure the most effective equipment.

We are talking about not every country in the world but our closest allies; we are talking about our closest friends—those who supported us in the war on Iraq and those who even sent troops, in the case of the British, to fight alongside ours.

If the Dayton amendment is approved, no British manufacturer can compete to sell equipment to the United States military. How do you justify that if it happens to be superior equipment? In the name of protectionism, we would deprive the men and women in the military of the best equipment we can find for them to fight and risk their lives.

Well, I have a second-degree amendment that states this removal of the Buy America equipment would not apply to our six closest Allies. I hope my colleagues will see their way clear to vote in favor of it.

Let me also tell my colleagues one other practical effect. We now tell these countries that we cannot, under any circumstances, buy their equipment. These are the same countries that are buying billions of dollars of our military equipment—F–16s, Abrams tanks, Apache helicopters. The list goes on and on. If you are running a company and you manufacture military equipment and you get the word that the United States, under no circumstances, will purchase it from you, what would you say about proposed purchases of American-made equipment? I think the answer is obvious. These are all freely elected governments, all governments that have to respond to their constituents. What will they say?

So the effect of this Dayton amendment, if passed, would be some $5.5 billion, which is the difference between what we buy from these countries and what they buy from us on an annual basis. I hope we will be able to adopt the substitute.

I understand my colleague's dismay and unhappiness about the performance of the French government and, to a lesser degree, the Germans and the Belgians but I also remind my colleagues there was a very large number of European countries that supported us, even in the face of public opinion which was against the government policy of supporting us in Iraq. So their support will now be rewarded by a prohibition from buying any military equipment they manufacture in their country. I don't think that is fair. I don't think it is right. Most of all, I think it is wrong if we are not going to purchase the best equipment no matter where it is produced in the world so our men and women in the military can best function in the safest and most efficient fashion.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Madam President, I applaud the senior Senator from Arizona for offering this second-degree amendment in the nature of a substitute. To characterize this amendment and this whole debate, we are getting down to where this is truly a referendum on the people who supported us in the recent war. Our closest allies—people we are going to continue to go forward with in a very uncertain world—are they people we are going to continue to work closely with when it comes to times of conflict?

The waiver is only for those six countries that worked with us very closely in the recent Iraq conflict. We are probably limiting it down too far, but we are doing that to try to at least say to the people who want the underlying Dayton amendment that we are going to at least limit it to those six countries that worked with us most closely in the last conflict.

Right now, we sell to them and they sell to us. We sell to them in much greater numbers than they sell to us. Normally, when we are talking trade around this body, most countries are selling more to us than we are to them. Yet we are still trying to lower tariffs on a lot of those countries to try to increase more trade back and forth. But in this case, we dominate the defense industry in the world.

This amendment could threaten the domination we have of the defense industry in the world. This amendment would say to our allies we want to sell you our products, but we are not willing to buy your products. This, in effect, sets up a trade war with our closest allies. Do we want to do that? No one wins in a trade war. Everybody loses. This would send a very poor message at exactly the wrong time to set up a trade war.

Our closest allies worked with us, as we saw, in Iraq. They were working so well together in training, with our equipment, so that when we go into a conflict, our communications devices could talk to each other. If we set up this kind of a trade war, we can threaten that type of integration in our training.

I fully support this amendment the Senator from Arizona has proposed today. I think the underlying amendment is faulty, and we need to have this second-degree amendment in the nature of a substitute to make sure we do not go down the wrong path.

I want to inform the rest of the Senators what we are trying to do timewise, as far as the schedule is concerned. We are trying to work out a unanimous consent agreement now to have a vote, hopefully somewhere around 6 o'clock, if that is possible tonight, on the underlying amendment, and then possibly on the second-degree amendment, and possibly after that have a side-by-side vote on the Dayton amendment. We don't know whether or not that is possible. We are trying to work that out and to alert people of the potential schedule for tonight. There is no agreement worked out yet.

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

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

Mr. REID. Madam President, following the disposition of the matter pending before the Senate—that is the Dayton amendment and the second-degree amendment offered by the Senator from Arizona—I ask unanimous consent that the Senator from Washington be recognized to offer an amendment and make a statement and withdraw the amendment.

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 legislative clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Madam President, we are waiting for the imminent return of Senator WARNER so we can start a vote on the second-degree amendment. While we are waiting—F–16s: The Netherlands, Belgium, Norway, Denmark, Singapore, United Arab Emirates; F–18s: Switzerland, Finland, Canada, and Australia; Tomahawk missiles: United Kingdom, Israel; F–15s and F–16s, AAMs, air to air missiles, 31 countries we sell those to. All of that equipment is sold to these other countries, and they are at least under the understanding that they can compete to sell some of their equipment in our Nation.

It is remarkable. I would imagine that if the Dayton amendment goes through, we will see cancellations of a number of those commitments to buy that equipment from the United States of America. No other freely elected government would do anything else.

I ask the Senator from Minnesota again the following question: If there is a country that is a close ally of ours that can produce a better piece of military equipment at a lower price, and our military decides it is the best with which we can provide our men and women in the military, would the Senator from Minnesota reject that?

Mr. DAYTON. Madam President, I would not, in answer to the Senator's question, reject that. In fact, under

current law, that is permitted. The Secretary of Defense can determine under his sole authority that the items in question can be bought.

Mr. MCCAIN. Reclaiming my time, Madam President.

Mr. DAYTON. The Senator asked me a question.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. The Senator from Minnesota ought to read his own amendment because the effect of his amendment would be to prohibit these countries from competing to sell their military equipment in the United States of America. I think that is a great disservice to the men and women in the military, and it is protectionism at its worst.

I would hope my colleagues will vote for the second-degree amendment. I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Madam President, if I may respond to the Senator from Arizona, I believe the Senator misunderstands my amendment. My amendment strikes the language in the committee bill that would change current law. My amendment returns us to existing law. It is a law that has been on the books for 70 years. It is a law that has been followed by Democratic and Republican administrations. It permits everything the Senator described in terms of these various sales of equipment, machinery, food, light clothing made by other countries when the Secretary of Defense shall determine on his sole authority that it is not reasonably possible to acquire those products made in the United States. It just says try to buy American. It does not even require it. It says try to buy American.

It is a law that was passed in 1933. The Barry amendment was added specifically to the Department of Defense in 1941. The Senate committee bill would change current law, and my amendment simply strikes that change in the committee bill. It simply reverts us to current law, which has been good enough for Republican and Democratic administrations for 70 years and permits just what the Senator said.

I share the Senator's desire, absolutely. Our Armed Forces should have the best—the best equipment, the best clothing, the best food, the best of everything. They should get it as rapidly as possible. They deserve it because they are the most courageous men and women anywhere in the world, and they proved that once again in Iraq. Specifically, for all these years, Congress has made clear in existing law that none of that shall be sacrificed. Quality shall not be sacrificed, speed shall not be sacrificed, nothing shall be sacrificed. But when all things are equal and we have a choice, buy American because then those public dollars are all going to have an additional benefit of providing jobs or preserving jobs in the United States of America rather than going to people overseas.

That is a secondary public purpose. It does not conflict with the first, but when it can complement the first, Congress says do it that way. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, there is an old saying about everybody is entitled to their opinion, but not everybody is entitled to their facts. The Department of Defense, to whom we give the responsibility to carry out the procurement of weapons, says:

> These flexibilities—
>
> Which are in the bill—
>
> are needed to counter restrictions that severely impede the ability of the Department of Defense to promote our national security policy that calls for standardization and interoperability of conventional defense equipment used by U.S. armed forces and used by the armed forces of our allies and coalition partners. The Department of Defense should have authority to make exceptions to these restrictions in the interest of national security comparable to the public interest exception authorized by the Buy America Act. By providing these flexibilities, Congress better enables the Department of Defense to acquire the best equipment and technology available, promotes improved readiness and capabilities of the U.S. armed forces, strengthens coalition warfighting capabilities, promotes competition in contracting needs of the U.S. armed forces. . . .

Obviously, the Department of Defense has a very different view of the impact of this legislation than the Senator from Minnesota. My colleagues can decide where the expertise lies. I yield the floor.

Mr. WARNER. Madam President, I thank my distinguished colleague. We are ready to vote.

Mr. DAYTON. Madam President, I would like to have one minute to make a final comment, if I may.

Mr. WARNER. How much time does the Senator need?

Mr. DAYTON. One minute.

Mr. WARNER. Of course.

Mr. DAYTON. I thank the chairman.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Madam President, I acknowledge this current administration in charge of the Department of Defense is entitled to its point of view. I point out my amendment returns us to current law. That has worked and has given to Secretaries of Defense, including the present one, discretion to do what the Senator from Arizona described has already been enacted or put in effect in terms of defense procurement.

It also, however, says that American jobs are important. At this point in time when we have lost 2.8 million jobs in this country since this administration took office, I think this is symptomatic of their lack of awareness and concern for employing Americans and doing so whenever possible or putting them back to work. For this Congress and the Senate to take the position, with 2.8 million people out of work in the last 2½ years looking for jobs, exhausting their unemployment benefits because they cannot find jobs, to say we cannot even be bothered to try to buy American before we go elsewhere I think is shameful.

I yield the floor.

Mr. WARNER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. Before we commence the vote, I ask the distinguished Democratic leader if he would be willing to agree to a firm time agreement on this vote of 15 minutes to be followed immediately by a second vote of 10 minutes.

The PRESIDING OFFICER. The Democratic minority whip.

Mr. REID. Reserving the right to object, Madam President, I ask the Senator to modify his amendment so we would have a vote on the McCain amendment; regardless of the outcome of the McCain amendment, that will be followed by a vote on the Dayton amendment; that the McCain amendment be 15 minutes in length and the Dayton amendment be 10 minutes in length.

Mr. MCCAIN. Reserving the right to object, if the pending amendment prevails, then it prevails. If the pending amendment fails, then we would be agreeable to a voice vote.

Mr. REID. That may come later. At this stage, the Senator from Minnesota wishes a recorded vote.

Mr. MCCAIN. After his amendment has been second-degreed?

Mr. REID. Yes. The arrangement we worked out—and that is why we modified the unanimous consent request of the distinguished Senator from Virginia. Regardless of the outcome of the McCain amendment, we have asked for a vote on the amendment of the Senator from Minnesota.

Mr. WARNER. That would be 10 minutes?

Mr. REID. That is right.

The PRESIDING OFFICER. Does the Senator from Virginia so modify his unanimous consent request?

Mr. WARNER. So modified.

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

The question is on agreeing to amendment No. 783.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from New Mexico (Mr. DOMENICI) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) is necessarily absent.

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

The result was announced—yeas 50, nays 48, as follows:

[Rollcall Vote No. 191 Leg.]

YEAS—50

Alexander	DeWine	McConnell
Allard	Dole	Miller
Allen	Ensign	Murkowski
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Shelby
Campbell	Gregg	Smith
Chafee	Hagel	Snowe
Chambliss	Hatch	Specter
Cochran	Hutchison	Stevens
Coleman	Inhofe	Sununu
Collins	Kyl	Talent
Cornyn	Lott	Thomas
Craig	Lugar	Warner
Crapo	McCain	

NAYS—48

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Bayh	Feingold	Lincoln
Biden	Feinstein	Mikulski
Bingaman	Graham (FL)	Murray
Boxer	Harkin	Nelson (FL)
Breaux	Hollings	Nelson (NE)
Byrd	Inouye	Pryor
Cantwell	Jeffords	Reed
Carper	Johnson	Reid
Clinton	Kennedy	Rockefeller
Conrad	Kerry	Sarbanes
Corzine	Kohl	Schumer
Daschle	Landrieu	Stabenow
Dayton	Lautenberg	Voinovich
Dodd	Leahy	Wyden

NOT VOTING—2

Domenici	Edwards

The amendment (No. 783) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, I ask unanimous consent that the rollcall on the Dayton amendment be vitiated.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Adoption of the McCain amendment makes the Dayton amendment moot.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, under the order, the Senator from Washington is to be recognized.

I ask if my understanding is correct, that there will be no more rollcall votes tonight? Senator WARNER and Senator LEVIN are going to work to see how much of the bill can be completed tonight—maybe all of it.

Mr. WARNER. Mr. President, I think that is a bit strong. The understanding on this side is that we would proceed on into the night.

Quite candidly, I say to colleagues, we are hoping to, one way or another, either accept the amendments or stack votes tomorrow morning which would be consistent with the Senator's representation that there will no further rollcall votes tonight. But tonight many Senators are going to participate on the floor in the proposal of these amendments or action on them.

Mr. MCCAIN. Mr. President, I ask the Senator from Nevada if we have all of the amendments from that side which are going to be proposed?

Mr. REID. No. The minority has not offered all the amendments which they intend to offer. I have kept in very close touch with the two managers of the bill. They know which amendments we now have.

Mr. WARNER. Mr. President, I think the Democratic leader and I have pretty well stated the case for the evening.

Mr. REID. Senator SCHUMER is near ready to offer his amendment. That will require a vote tomorrow for sure. There are a couple of other amendments we are working on.

Mr. WARNER. Might I inquire about the amendment of the Senator from California?

Mr. REID. She has indicated that she will not be ready to vote tonight. We are going to have to work on that in the morning. The Senator from California has been working with our manager. We hope to be able to work something out on that. We don't have that finished yet.

We also have explained to the Senator from Virginia that Senator BYRD has a problem, and we are going to try to work that out.

Mr. WARNER. Mr. President, I am working on that problem. It is a very legitimate request. I am working on that tonight.

Mr. REID. Until we get Senator BYRD's problem resolved, we can't have time for final passage.

Mr. WARNER. The Senator has made that case clear. So far as I know, I can say for my side, I know of no request at this time for a rollcall vote. We will work through the amendments this evening.

Mr. LEVIN. Mr. President, will the Senator yield? Do we have a list of all of the amendments on the Republican side?

Mr. WARNER. I think we are pretty near complete on that list. I have indicated to my colleagues that by this time they should have brought the amendments to the managers.

The PRESIDING OFFICER. Under the previous order, the Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, as many of my colleagues know, I have come to the floor for 6 of the past 7 years to offer the Murray-Snowe amendment to lift the restrictions on privately funded abortions for our military women serving overseas. We have offered this amendment virtually every year since 1996 with the hope that one day women in the military would not be required to sacrifice their constitutional right when they serve overseas.

Since 1996, this amendment has twice passed on the Senate floor only to be killed during conference. This amendment has always been relevant and germane, even in postcloture debate. The amendment simply ensures access to safe and legal reproductive health care for our military personnel. Access to safe and legal health care is certainly relevant when discussing the Department of Defense authorization bill.

I find it extremely hard to understand how after these 7 years this topic is suddenly no longer relevant. It does not make sense. I think it is an outrage and an insult to the women who serve in our military. I would never want to have to tell a woman in our Armed Forces who is risking her life to serve our country overseas that her health care is irrelevant in the Senate.

The intent of the Defense authorization bill is to ensure that our military has the resources and support it needs to protect all of us. The health of our female service members is certainly a key ingredient in a successful military. Today, women are serving side by side in combat situations and in hostile war zones. Women are a critical part of our military. They serve in leadership roles, and they provide outstanding service. Their health care is relevant. I don't know how many of my colleagues could come to the floor and argue any differently.

I thank the cosponsors of the amendment, including Senators SNOWE, BOXER, CANTWELL, COLLINS, SCHUMER, JEFFORDS, and CORZINE.

My amendment would eliminate the restrictions on privately funded abortions only. It doesn't change conscience clauses for military personnel. It doesn't require direct funding, and it would not result in a huge new mission for military health care.

Under current restrictions, women who volunteer to serve their country—and female military dependents—are not allowed to exercise their legally guaranteed right simply because they are serving overseas. These women are committed to protecting our rights as free citizens. Yet they are denied one of the most basic rights accorded all women in this country. Women depend on their base hospital and military care providers to meet all of their health care needs. Singling out abortion-related services could jeopardize a woman's health.

The truth is, women serving overseas have very few options when facing a difficult pregnancy. They can seek care in a host country, but few countries have the standard of health care that we take for granted here at home. These women service members can seek leave—not medical leave—and be transported back to the United States.

These are difficult options which put women's lives in jeopardy. That is why retired GEN Claudia Kennedy, the Army's first woman three-star general, supported my amendment. She has firsthand knowledge of women who face this difficult experience, and she wrote to me about one of those women. She told me:

> [T]hat in a very vulnerable time, this American who was serving her country overseas could not count on the Army to give her the care she needed.

The impact of this unconstitutional restriction on women's health is supported by the American College of Obstetricians and Gynecologists, the American Medical Women's Association, Physicians for Reproductive Choice and Health, and the National Partnership for Women and Families.

In the past, some have argued that allowing privately funded abortions in military facilities overseas would be a huge burden that the military couldn't meet.

I wish to point out that the previous administration endorsed my amendment and saw no problems implementing this policy.

I also add that under current law the military is required to provide abortion-related services when a woman's life is in jeopardy in the case of rape or incest. To say that the military cannot provide this service calls into question that ability to meet current law.

In the past, we have had concerns raised about objections from host countries. Abortion is illegal in many countries, as is family planning for unmarried women. In some countries, simply allowing them to drive can violate local customs and laws.

I think the military has a long tradition of respecting the laws and customs of host countries without delegating women to second-class citizenship status or sacrificing our own proud history of equal treatment under law. Current restrictions humiliate servicewomen by forcing them to seek the approval of their commanding officer in order to travel back to the United States for abortion services.

We know from a previous GAO report issued in May of 2002 that many commanding officers ''have not been adequately trained about the importance of women's basic health care.'' Department of Defense officials say that lacking this understanding, some commanders may be reluctant to allow active-duty members, both women and men, time away from their duty stations to obtain health care services.

Many women are forced to seek care off the base or wait until leave can be arranged without approval from a commanding officer.

Many women are forced to delay the procedure for several weeks until they can travel to a location where safe and adequate care is available.

I have to tell you, I do not see why lifting this offensive and dangerous restriction now—this year—is not relevant to a Department of Defense authorization bill. Isn't it our goal to provide the resources and support for our military personnel? How can the health and safety of women who serve in the military all of a sudden be called not relevant?

I have been told that if I offer this amendment, the Chair is going to rule it out of in order on the claim it is not relevant, so I have no choice but to withdraw my amendment.

I do not know how we explain to military servicewomen that their health care is not relevant or that supporting their access to safe and legal reproductive health care is somehow now not part of the Defense authorization bill.

This is a sad day for our country when women who are serving their country overseas are told their health care is not relevant by the Senate.

Mr. DORGAN. Will the Senator yield for a question?

Mrs. MURRAY. I am happy to yield for a question.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I am asking the Senator from Washington to yield for a question.

Frankly, I am surprised, and I think it is a travesty that you are not able to offer your amendment. I do not understand on what legislation this would be relevant if not this legislation. I know you have offered it previously on the Defense authorization. I have voted for it on the Defense authorization on previous occasions. And this seems to me to be the same kind of trap we have discovered now with respect to the amendment dealing with concurrent receipts for retired veterans who also have been disabled who are prevented from collecting both. We are told that is not relevant. My amendment to scrap the 2005 base closing round, we are told that is not relevant.

I wonder if there is any legislation on which these kinds of amendments would be more relevant than the Defense authorization? It is where they should be offered. It is the location of this debate. It is where this debate must be held. Somehow we have gotten into this trap of being told this is not relevant. Clearly, it is relevant.

So can the Senator from Washington tell me, is there another piece of legislation where this would be more appropriately offered? I cannot think of one.

Mrs. MURRAY. The Senator is absolutely correct.

There is no other piece of legislation that is before us where this is relevant. In fact, I have offered this six times on the Department of Defense authorization bill, even postcloture, and it was considered relevant.

I am shocked and amazed that women are being told today they are not relevant. I am furious that women are being told they are not relevant when it comes to the Department of Defense, when it comes to their health care, and when it comes to the Senate.

Mr. DORGAN. If the Senator will yield further for another question, if you offered this postcloture on previous occasions—it relates to a question that was asked yesterday—has the judgment about what is relevant changed here in this Chamber? The answer to that, in my judgment, is yes. In my judgment, this would have been relevant under almost any other set of circumstances.

But I wonder if the Senator from Washington would agree with me that we should never, ever again—I will never, ever again allow a unanimous consent agreement on the floor of the Senate on an authorization bill of this type to decide that we will restrict ourselves to relevant amendments. If the definition of ''relevancy'' is reasonable and thoughtful, then that is just fine with me, but in this case it has not been.

It is a travesty of justice that the Senator from Washington is not able to offer her amendment today. The same is true with concurrent receipt, and the same is true with base closings. So I would say there will not be a unanimous consent request that gets consent to say on the next authorization bill we will limit ourselves only to relevant amendments.

It is quite clear now the definition of ''relevancy'' has changed in a way that disadvantages the Senator from Washington and others who want to offer amendments that are clearly relevant to this bill and have always been relevant to this bill, but now we are discovering, for some reason, it has been ruled nonrelevant. I think that is a travesty.

I say to the Senator from Washington, would the Senator agree that she would want to join those of us who object to these further unanimous consent requests on future bills with respect to relevancy, if this is the way ''relevancy,'' if this is the way ''relevant'' is going to be defined here in the Senate?

Mrs. MURRAY. I hear the Senator, and I absolutely agree. And I will join with any Senators who object to any bill coming up when the word ''relevant'' is being used.

I have been in public policy for almost two decades now, and ''relevancy'' and ''germaneness'' have meant specific things to all of us, and we have offered relevant amendments, including the amendment I meant to offer tonight, and they have always been relevant. They have been relevant on this bill six times already, even postcloture.

It seems to me now we have a definition for ''relevancy'' that is above the definition of ''germaneness,'' and that is simply unbelievable to me. I concur with the Senator, the only thing we have left is to not agree to any unanimous consent requests that use the word ''relevancy.''

But I say to my colleague, it seems to me the word ''relevancy'' is now putting a lot of people into being irrelevant: veterans, when it comes to concurrent receipt; communities that are trying very hard to keep stable, when it comes to base closures; and now women—we are all irrelevant. I find that extremely upsetting.

Mrs. BOXER. Mr. President, will the Senator yield for a question?

Mrs. MURRAY. I am happy to yield to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I just want to say to my friend from North Dakota and my friend from Washington State—who has been such a leader on women's issues, family issues, and children's issues—and to my friend from Illinois, who is in the Chamber, who I know is also concerned about this—this is really the first time I have ever seen a circumstance quite like this.

When the Senator from North Dakota says it is putting the Senator

from Washington at a disadvantage, I have a question for the Senator from Washington.

When the Senator from North Dakota says she is put at a disadvantage, let me just say it goes far beyond that. Who are being put at a disadvantage here, I would say, are the women who serve in the Armed Forces. My God, we lost them in Iraq. We all know the story of Jessica Lynch. We all revere the men and women in uniform. And in this bill, we know, unless my friend gets a chance—a chance—to remove a restriction, a woman in the military who finds herself in a very troubling situation, who wants to exercise her legal rights, a health care right that is legal and constitutional—she cannot even use her own money and have a safe abortion. This is the fact.

I say to my friend, yes, my friend is being inconvenienced, but I know she stands up for the women in the military tonight. It is a very sad night to hear that the most relevant of amendments that deals with women in the military cannot be offered.

I say to my friend—because I will ask her a question—does she not believe this is a slap from the Senate to the women who are serving so bravely in uniform?

Mrs. MURRAY. The Senator from California is correct. This is a real slap in the face to the women who serve us overseas in the military, who are asked every single day to protect us, to fight for what we believe in, to fight for our freedoms. They are being told they are second-class citizens and, worse yet, they are irrelevant in the Senate.

Mr. DURBIN. Will the Senator yield for a question?

Mrs. MURRAY. I am happy to.

Mr. DURBIN. Mr. President, I asked the Senator if she would yield for a question.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. It is my understanding that you have not offered this amendment at this point.

Mrs. MURRAY. I have not offered it yet. I am about to make a request to do so.

Mr. DURBIN. I would like to ask, on your consent, to be added as a cosponsor of this amendment, if that meets with your approval, first.

I would like to ask, initially, is it not true that this question of relevancy has been directed to the Parliamentarian of the Senate?

Mrs. MURRAY. That is correct.

Mr. DURBIN. And you have submitted your amendment to the Parliamentarian, and they have said it is not relevant to the bill?

Mrs. MURRAY. That is correct. We have submitted it to the Parliamentarian, who told us it was not relevant. We came back and worked to try to change the language. We were told it needed to touch four corners. I don't have a clue what that means, but we were told it would be ruled irrelevant.

Mr. DURBIN. You offered this amendment to this same bill on six different occasions?

Mrs. MURRAY. That is correct.

Mr. DURBIN. It appears we either have a new rule or the rule has changed when it comes to the Department of Defense authorization bill.

Mrs. MURRAY. The rules have definitely changed, I say to the Senator, because I have offered this amendment postcloture and it has been considered relevant before.

Mr. DURBIN. If I recall correctly—the Senator can correct me if I am wrong—but postcloture there would even be a higher standard.

Mrs. MURRAY. That has always been my understanding of the issue of germaneness and relevancy. So I am at odds with the definitions we have been presented with at this time.

Mr. DURBIN. The Senator from North Dakota has made it clear, when we tried to offer an amendment on the Base Closing Commission—which is included in this bill, incidentally, and which was created by this bill—it, too, has been judged irrelevant.

I would like to ask the Senator this question: If an amendment is considered germane, does the Senator not agree with me that it, in most interpretations, has passed the test of relevancy? Isn't that a lower standard by parliamentary rule?

Mrs. MURRAY. I have always understood the definition of ''relevancy'' to be a lower standard than the issue of germaneness.

Mr. DURBIN. May I make a parliamentary inquiry of the Chair?

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. DURBIN. Would the Chair state for the record the standard that is being used to determine the relevancy of amendments being offered?

Mr. WARNER. I object.

The PRESIDING OFFICER. Objection is not in order.

Mr. WARNER. I apologize to the Chair. I have six things going on at one time.

Mr. DURBIN. I made a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Illinois has made a parliamentary inquiry. The Chair is considering the inquiry. There is a parliamentary inquiry pending.

This is the test of relevancy:

> When relevancy of amendments is required by a unanimous consent agreement, that test is broader than the germaneness test as it is a subject matter test, and amendments that deal with the subject matter of the bill to which this requirement attaches are in order, provided they do not contain any significant matter not dealt with in that bill.

Mr. DURBIN. May I ask a further inquiry of the Chair. Could he make reference to what he has just read.

The PRESIDING OFFICER. From page 1362 of Riddick's Procedures, footnote 352.

Mr. DURBIN. Might I ask, further parliamentary inquiry, do I understand what the Chair has just said as a response to my inquiry that the standard for relevance is higher than the standard of germaneness?

The PRESIDING OFFICER. No, it is not.

Mr. DURBIN. So if this amendment has been found to be germane postcloture with previous bills, it would suggest to me it obviously has met the standard, at least the standard of relevance.

The PRESIDING OFFICER. The Chair would suggest the language in previous bills is not exactly the same as the language in this bill.

Mrs. MURRAY. Mr. President, reclaiming my right to the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. I find that simply astounding. Department of Defense bills are essentially language that changes for different military programs, all kinds of things in the bills. But certainly the issue of whether or not a woman has a right to have safe and legal health care overseas when she is serving her country has been ruled as germane in the past. It seems obviously pretty out of order and extraordinary that that would be where we are tonight.

Let me just do this, because I think all of us agree this amendment is one that has been considered on the bill before. It does deal with a woman's ability to have safe health care. It is one that has been ruled germane twice in postcloture times. I would just ask unanimous consent that the rule on relevancy at this time be waived so I can offer the amendment tonight, because I think it is important that we allow a procedure that has been done many times before to continue under this bill.

I ask unanimous consent to do that.

The PRESIDING OFFICER. Is there objection to waiving the unanimous consent request?

Mr. WARNER. Objection from the Senator from Virginia.

The PRESIDING OFFICER. Objection is heard.

Mrs. MURRAY. Mr. President, I find that very troubling. I find it troubling the Senate has now decided to change the definition of relevancy we have operated under in the Senate as long as I have been here. It appears very clear to me now that the issue of relevancy is a much higher standard than the issue of germaneness. We have stepped into a realm most of us are going to be very sorry we are in.

I again will say to my colleagues that having objected to waiving this relevancy, having listened to how we have now changed the definition of relevancy, what we are really doing is saying to women in this country they are irrelevant. I find that to be very sad, Mr. President.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. May I say to my distinguished colleague from Washington that I recognize through the years she has been a steadfast proponent for those women in the armed services faced with the difficult choice you have

outlined to the Senate tonight. I express regret, but the distinguished ranking member and myself have been, throughout the deliberations on this bill, not acting in any way as the Supreme Court to overrule the ruling of the Parliamentarian on these amendments. We have tried to be fair, equitable on both sides. We have not waived one time. It is with regret that I had to interpose this objection because I recognize the merits of the amendment which you have had. You have done it now how many years, Senator?

Mrs. MURRAY. Seven years.

Mr. WARNER. Seven years.

Mrs. MURRAY. Mr. President, will the Senator yield for a question?

Mr. WARNER. Yes, indeed.

Mrs. MURRAY. I ask the Senator from Virginia, what I am having trouble understanding is why an amendment that has been considered germane in the past tonight under the ruling is not considered relevant. I would ask the Senator from Virginia if he is not also troubled that we have now set a definition for relevancy that is higher than the standard for germaneness that may indeed trouble us far into the future?

Mr. WARNER. Mr. President, I respond to my colleague, with all due respect, I will not try and engage in an evaluation of how the Parliamentarian goes about the votes; that is, determining whether or not each amendment is relevant. But I would say I do not recall in years past the issue of relevancy having been raised on the Senator's amendment. I stand to be corrected.

Mrs. MURRAY. Mr. President, if I could just respond to the Senator, this amendment I am offering tonight in the past has been ruled in postcloture as germane. I am now tonight being told it is not relevant.

Mr. WARNER. It depends on the content of the bill to which that ruling was addressed.

Mrs. MURRAY. I would add this amendment has been offered seven times, virtually every year since 1996, on this exact bill, the Department of Defense authorization.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, let me try to understand this a bit, what the circumstances are. My understanding is the Senator from Washington has propounded a unanimous consent request that has been objected to that would have allowed her to offer her amendment notwithstanding the ruling on relevancy. My understanding is this amendment is now viewed as nonrelevant to this bill, despite the fact it has been offered seven times before. If it is nonrelevant to the Defense authorization bill, I would like to ask the Chair what would be the circumstances in the Senate from a parliamentary standpoint if the Senator from Washington offered this amendment to the Defense appropriations bill? In a moment I would like to get a response if I could because there are two bills that come to the floor of the Senate that we know each year are going to deal with the issue of defense. One is the Defense authorization bill, and the other will be Defense appropriations. If this is deemed nonrelevant to the Defense authorization bill, I would ask the Presiding Officer whether the amendment could be offered to the Defense appropriations bill without a point of order being made?

The PRESIDING OFFICER. It is not possible to prejudge a ruling when the content of a bill is not before us.

Mr. DORGAN. Let me inquire further, if I might. Would this amendment, based on the knowledge of the Parliamentarian about the amendment, would this amendment be considered legislating on an appropriations bill should it be offered to an appropriations bill?

The PRESIDING OFFICER. We do not have the amendment in front of us because the Senator has not called it up.

Mr. DORGAN. To the extent the Office of the Parliamentarian has ruled the amendment nonrelevant, my assumption is the Office of the Parliamentarian has certainly understood the amendment, reviewed it, and determined it to be nonrelevant.

If that is the case, if the Office of the Parliamentarian understands the amendment, my question remains, if this amendment is offered during consideration of Defense appropriations, would there be a point of order against the amendment as legislating on an appropriations bill?

The PRESIDING OFFICER. It is probably a legislative amendment.

Mr. DORGAN. Mr. President, that means if it is a legislative amendment on an appropriations bill, there would be a point of order against it; is that the case?

The PRESIDING OFFICER. It is possible a point of order would lie.

Mr. DORGAN. So a point of order could be raised that would lie against the amendment because it is then legislating on an appropriations bill. If that is the case, as I understand the answer from the Chair, we are in a circumstance where we have told the Senator from Washington that her amendment dealing with an important issue—clearly to the center of this bill on Defense—cannot be offered on the Defense authorization bill because it is not relevant to the Defense authorization bill.

Then the Senator would be told later, when she tries to offer it to the Defense appropriations bill, this is legislating on a Defense appropriations bill and a point of order would rise against it. Why? Because she should have offered it to the authorization bill.

Can someone tell me whether that is not a Catch-22 for the Senator from Washington and others? Have we not put her and others in a circumstance where they are prevented from offering this amendment under every circumstance? Isn't that the case? We say to her, you cannot offer it on the authorization bill. So then she comes to the Defense appropriations bill and offers it. The point of order is raised, and the point of order says, you know what, you cannot offer it on appropriations. You should have offered it on the authorization bill.

That is what the Senator from Washington is going to be told. I just ask the rhetorical question, Does anybody in the Chamber think that is fair? Not me.

I know there wasn't a deliberate attempt for anybody to be unfair, but I make the point that the consent request entered into with respect to this issue of relevancy has put people in a position—especially Senator REID, myself, and Senator MURRAY from Washington on this issue—that is pretty untenable. But that is the position we are in.

I think the way to get out of it is to understand that somehow these things could be offered, or should be offered, and a unanimous consent be allowed for these issues to be debated and voted on. I cannot believe it would have been the intent of my colleague from Virginia, or the ranking member from Michigan, to say we want to prevent an amendment that has been offered seven times previously to this bill, which we all understand is clearly relevant to the bill.

Again, I say as I said yesterday, the folks who understand this process from our side were very surprised at the issue of relevancy and how the rulings on relevancy occurred. I know yesterday during this discussion a question was propounded by my colleague from Virginia, the chairman, to the Presiding Officer to ask whether the standard of relevancy has changed. And the answer was, no, it has not.

That is not accurate. It clearly has changed. My colleague from Washington is evidence of that. If her amendment was germane postcloture previously, then her amendment, by definition, had to have been relevant postcloture. And if it is relevant then, and it is not relevant now, the standard has changed.

I don't think that was the intention of the chairman or ranking member with respect to her amendment—mine or any other amendment. I am not asking or suggesting bad faith on anybody's part, but we have an unintended consequence. If an unintended consequence says to the Senator from Washington, I am sorry, you cannot offer your amendment on the authorization bill, and when you try it later—as she will and must—on the appropriations bill, she will be told she should have offered it on the authorization bill, that puts her in a position that is unfair.

I yield the floor.

Mr. DURBIN. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DURBIN. Mr. President, I would like to ask for clarification because I

think this is an important question. If you would provide a response to the following parliamentary inquiry, it is my understanding—in fact, I have the amendment before me that has been suggested by the Senator from Washington. This is an amendment that relates to the use of Department of Defense medical facilities, and it amends section 1093 of title X of the U.S. Code, as amended.

Now, if the Chair would just take legislative notice of the bill, S. 1050, and turn to page 157, you will see title VII, ''Health Care.''

Now, if you turn to page 10, you will find in section 703 an amendment—language within the authorization bill relative to extension of authority to enter into personal service contracts for health care services to be performed at locations outside medical treatment facilities. It goes on to amend section 1091(a)(2) of title X. Here we have an amendment relative to health care, relative to the medical treatment facilities managed by the Department of Defense, which seeks to amend section 1093.

Already in this provision of the bill, we amend section 1091. Can the Chair tell me how we can amend the same section of the law relative to medical treatment facilities, and the amendment being offered by the Senator from Washington not be a relevant amendment? It is in the same section relative to health care, on the subject of health care. It relates to Defense medical facilities, as do many of the amendments within that section.

Yet the Chair is telling us it is not relevant language to this section of the pending bill, which the Senator from Washington seeks to amend.

The PRESIDING OFFICER. The Chair is considering the inquiry.

The point is whether the issue presented by the Senator's amendment is addressed in the bill, which it is not.

Mr. DURBIN. Further parliamentary inquiry.

The issue being addressed by the Senator from Washington is the treatment afforded at Defense medical facilities. If the Chair will note in section 703 of the bill, it relates to the treatment afforded at Defense medical facilities. How much more relevant could this be?

The PRESIDING OFFICER. The advice given on this were preliminary rulings, subject to further information, based upon information available at the time the amendment was presented.

The Chair is not aware that this argument has ever been presented to the Parliamentarian's Office. The burden would be on the sponsors to make that case.

Mr. DURBIN. Further inquiry: If the Senator from Washington should submit this amendment now, will it then be incumbent upon the Chair and the Parliamentarian to rule on its relevancy?

The PRESIDING OFFICER. The ruling would only be made if the amendment is challenged under the unanimous consent request. The Senator from Washington—

Mr. LEVIN. Will the Senator yield?

Mr. DURBIN. Yes.

Mr. LEVIN. Mr. President, if this amendment is presented at this time to the Parliamentarian, will we obtain a ruling as to whether or not it is relevant?

Is there any reason why the request of the Parliamentarian, relative to this amendment as to whether or not it is relevant, cannot be responded to by the Parliamentarian at this time or at any time?

The PRESIDING OFFICER. If a ruling is requested, a ruling will be issued.

Mr. LEVIN. I thank the Chair.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 691

Mrs. MURRAY. Mr. President, I send my 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 Washington [Mrs. MURRAY], for herself, Ms. SNOWE, Ms. Boxer, and Ms. CANTWELL, proposes an amendment numbered 691.

The amendment is as follows:

(Purpose: To restore a previous policy regarding restrictions on use of Department of Defense facilities)

At the end of title VII, add the following:

SEC. 708. RESTORATION OF PREVIOUS POLICY REGARDING RESTRICTIONS ON USE OF DEPARTMENT OF DEFENSE MEDICAL FACILITIES.

Section 1093 of title 10, United States Code, is amended—

(1) by striking subsection (b); and

(2) in subsection (a), by striking ''RESTRICTION ON USE OF FUNDS.—''.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Virginia.

Mr. WARNER. Mr. President, I suggest the absence of a quorum to allow time in which the Parliamentarian can examine the amendment.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative 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. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, Senator MURRAY is waiting for a ruling from the Chair on her parliamentary inquiry.

In the meantime, I ask unanimous consent that Senator CARPER be recognized to speak for up to 10 minutes, and that following his speech, the Senator from Washington be recognized.

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

The Senator from Delaware.

Mr. CARPER. Mr. President, I thank the assistant Democratic leader.

Mr. President, in considering the military priorities of our country, we are addressing one of the most important challenges facing our Nation and its Government. That challenge is to transform America's military to meet the threats of this century the 21st century, and to do so in an environment of increasingly severe budgetary constraints.

The spectrum of potential conflict in which America could find itself engaged over the coming years is practically limitless. From fighting major regional powers to pursuing shadowy bands of terrorists, the missions our military must be ready to perform are many, and they are varied.

Unfortunately, the resources available to us in preparing to meet these challenges are not without limit.

What was the largest surplus in the history of this Government just 2 short years ago has given way to the largest deficit in our Nation's history. And this has happened at a time when the demands on the Federal budget are growing and will continue to grow.

Recent reports out of Iraq indicate that the task of post-war reconstruction will be neither easy nor cheap. Recent events in Saudi Arabia and Morocco indicate that the war on terrorism may still be in its infancy.

There are also domestic priorities that demand attention. The bipartisan education reform initiative passed in the first year of the President's term has yet to be fully funded. There is a growing recognition that our health care system is fraying at the seams. And the baby boomers, my generation, are marching toward retirement. When they get there, it will place unprecedented strains on Social Security and Medicare.

Our present course is not sustainable. We will soon be asked to raise the ceiling on the national debt by nearly $1 trillion. At the same time, the administration is projecting that within 5 years funding for defense will rise to more than 20 percent above cold-war levels. Even at that high level, moreover, it is doubtful that the defense budget could accommodate the full cost of the administration's plans as they currently stand.

This is our dilemma. We cannot afford to forego military transformation. The threats to our security are simply too great. But neither can we afford to proceed without consideration to cost. After all, it is our quality of life that the military is charged with defending. It is that same quality of life that will eventually begin to erode in the absence of a sense of fiscal balance.

What I want to talk about for a few minutes this evening is one of the central components of military transformation. I want to talk both about its importance and about some of the choices we can make to address our security requirements in this area in a cost-effective manner.

Strategic airlift will be one of the cornerstones of successful military transformation. The imperative to transform our military is driven by the necessity to project force faster, with

greater precision, and over greater distances. As President Bush stated in his commencement address at the U.S. Naval Academy in May 2001, America's future force will be ''defined less by size and more by mobility and swiftness.''

In the wake of the cold war, the United States has closed two-thirds of its forward operating bases. Yet the four services are all in the process of speeding up the timeframe in which they expect to deploy troops and equipment to the far corners of the globe.

The Army's stated goal, for example, is to deploy an Interim Brigade Combat Team—complete with 3,500 personnel, 327 armored vehicles, 600 wheeled vehicles, air defense weapons, artillery, and engineering equipment—anywhere in the world within 96 hours. Airlift is the only means to accomplish this objective.

In March 2001, the Joint Chiefs of Staff completed a review of our Nation's strategic airlift requirement. This study was completed before September 11 and all that has flowed from that terrible day. Still, the conclusion of that study was that the Nation's airlift requirement had risen 10 percent sine the last study was conducted just 5 years before.

Many believe that the changed security environment post-September 11 has actually increased our strategic airlift requirement still farther. We are requesting, as part of this bill, that a new review of the strategic airlift requirement going forward be conducted. We expect that what we will find is that the airlift requirement is higher than the 54.5 million ton miles per day specified before September 11.

Regardless of whether the requirement has risen or not, however, the fact remains that our present capacity falls short of the requirement as it was spelled out just 2 years ago. The question we must answer, therefore, is how will we maintain and how will we build a strategic airlift fleet that will meet the relevant requirement and do so without busting our budget even more. In other words, how do we provide cost-effective strategic airlift for the 21st century?

Some of the Air Force have launched a campaign to retire more than half of the Air Force's C–5 fleet over the next few years, specifically those that date back to the 1970s, the C–5As. Maintenance problems, particularly engine problems, have plagued the C–5As for years. The solution for some in the Air Force is to simply get rid of them and to rely primarily on the procurement of new aircraft to meet our growing strategic airlift requirement.

In order to meet the new, higher requirement for strategic airlift in the 21st century, we will certainly need to purchase new aircraft. The Air Force is currently in the process of purchasing some 180 new C–17s. I support this purchase. The C–17 is an excellent aircraft, and we are excited that a squadron of 12 C–17 cargo aircraft will be stationed at Dover Air Force Base in Delaware beginning in 2008.

Having said that, sending more than half of our Nation's C–5 fleet to the ''boneyard'' makes no sense. The C–5 is, and will continue to be, the workhorse of American airlift. The C–5 completed nearly 5,000 sorties during the recent Iraq war and delivered nearly half of the cargo and troops into combat.

Moreover, a balance of C–5s and C–17s offers the Air Force an advantageous mix of complementary capabilities. The C–5 can carry more, and can carry farther. The C–17 is more maneuverable on the ground. During the war in Afghanistan, much of the cargo was flown from the continental United States to Europe in large loads aboard C–5s. The cargo was then broken down into smaller loads and flown into theatre by C–17s.

As a former naval flight officer who has known firsthand the frustration of naval aircraft that had a propensity to break down, I can empathize with the frustration that some in the Air Force feel with respect to the C–5As chronically low mission-capable rates. But scrapping the entire platform is not the answer.

The wings and the fuselages of both the C–5As and the C–5Bs have useful lives—listen to this—of another 30 to 40 years. For the cost of purchasing a single new C–17 cargo aircraft, three C–5s can be outfitted with reliable new engines, modern hydraulics systems, and landing gear components, plus a new avionics package and radios that will bring C–5 cockpits into the 21st century.

All of these upgrades are off the shelf. They are readily available, and they are capable of bringing the mission capable rates of the C–5s in line with those of the C–17s.

Given the fact that one C–5 can haul 80 percent more cargo than one C–17, the same dollar invested in modernizing C–5s produces more than five times the airlift capacity of the same dollar invested in the purchase of new C–17 aircraft.

A strategic airlift fleet with a full complement of C–5s and C–17s offers the best of all worlds. Retaining the enormous cargo capacity of our C–5s, both As and Bs, will make it easier to achieve the full airlift requirement of our Armed Forces in the 21st century. Maintaining a healthy balance of C–5s and C–17s will offer the Air Force maximal operational flexibility. And taking full advantage of the cost savings that comes from modernizing, as opposed to scrapping, the C–5As will free-up resources to meet other Air Force priorities and reduce our Federal deficit over the long run.

Choices that are more cost-effective by ratios of 5-to-1 are precisely the kinds of choices we ought to be interested in making as we seek to transform our military without burying our children in red ink.

I want to take a moment, in closing, to thank a number of members of the Armed Services Committee. I particularly thank Senators WARNER, LEVIN, KENNEDY, and TALENT for the work they have done to ensure that we continue to capitalize on the contribution that the C–5 can make to cost-effective strategic airlift in the 21st century. Besides calling on the Air Mobility Command to look again at our Nation's airlift requirement, this bill keeps C–5 modernization on track. In particular, it specifies that 18 C–5Bs and 12 C–5As will be revamped with modern avionics in fiscal year 2004.

This is a win—a win for our fighting men and women, and it is a win for the American taxpayer.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I wish to commend our distinguished colleague from Delaware. He has worked very diligently on this issue since the first moment he joined the Senate. You have been very helpful to the distinguished ranking member and myself in bringing these matters to our attention and to other members of the committee. I think the Department of the Air Force and indeed the whole Armed Forces that are so heavily dependent on airlift owe you a debt of gratitude.

The PRESIDING OFFICER. Under the previous order, the Senator from Washington is recognized.

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

Mrs. MURRAY. I yield for 30 seconds.

Mr. LEVIN. I join in the commendation to the Senator of Delaware for his tenacity in keeping airlift available.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I understand the Senate is waiting for a ruling from the Parliamentarian of the relevancy of the amendment I sent to the desk and I ask if that ruling is ready.

The PRESIDING OFFICER. It is the opinion of the Chair, with the additional information provided, the Senator's amendment is relevant.

The Democratic whip.

Mr. REID. Mr. President, I have had a conversation with the Senator from Washington. She would be willing to enter into a reasonable time agreement. She would want to complete that debate tomorrow, however, in that the hour is late and she has spent so much time here already. I would be happy to work with the two managers of the bill to come up with a reasonable time she can debate this in the morning and have a vote on it in the morning.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. My understanding is you are not making a request, you are just advising the Chair and the Senate. I wish to, in courtesy, advise you I know of at least one amendment in the second degree and there could be two.

Mr. LEVIN. Would the Senator yield? Who has the floor?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I am wondering whether we will have the language of those amendments or amendment this evening?

Mr. WARNER. Mr. President, I would have to inquire of the language of the amendments.

Mr. LEVIN. Any second-degree amendment.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I would like to make two comments in morning business, not on the bill. I want to leave it to the Senators from Virginia and Michigan if there is anything they want to do on the bill this evening.

Mr. WARNER. Mr. President, we are endeavoring to do a good deal of work on the bill this evening. I don't know the duration of the time the Senator wishes.

Mr. DURBIN. I ask for 5 minutes in morning business.

Mr. WARNER. As soon as we are able to conclude the matters relating to the amendment of the Senator from Washington, I can better answer the question.

Mr. President, I wish to advise my colleagues on our side we, of course, had relied upon the previous ruling of the Parliamentarian. Therefore, these amendments are not yet ready.

Mr. LEVIN. Would the Senator yield?

Mr. WARNER. Yes.

Mr. LEVIN. Do you expect they would be ready tonight if we are here for an additional half hour?

Mr. WARNER. I think there is an opportunity they could be ready. We are checking.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. We would be willing to enter into a time agreement if we saw the amendments and they were reasonable and we thought we could do that. But not having them, we can't do that. The Senator from Washington, if there would have been an up-or-down amendment, would have agreed to a 40-minute time limit evenly divided.

Mr. WARNER. Do I understand the distinguished leader to say 40 minutes equally divided?

Mr. REID. That is right. I would note we have very few amendments. Senator DODD has one. Senator DASCHLE has one. Senator BOXER has one we have already discussed, and Senator BIDEN has one. We have very few amendments. Some of these may be worked out by the managers. The Daschle amendment, as we have indicated, would be 20 minutes evenly divided. The Schumer amendment has been declared not relevant so we can't take that up. The Boxer amendment, we agreed to a one-hour time agreement on that. Both managers know what that amendment is. Senator BIDEN has agreed to 30 minutes on his amendment if it is not agreed to.

Mr. WARNER. Mr. President, I am informed we have not seen the Boxer amendment.

Mr. REID. Well, she was showing it to anybody who wanted to look at it.

Mr. LEVIN. Mr. President, let us try to obtain a copy of that amendment, if I could ask the Senator from Nevada.

Mr. WARNER. I think it would be best served if we put in a quorum call so we can try and put the pieces together.

Mr. President, as I understand, the distinguished Senator from Illinois wishes to address the Senate as in morning business for 7 minutes.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, my thanks to the Senators from Virginia and Michigan for accommodating me. I thank the Parliamentarian. I have been in a similar position in another legislative body. It is a tough assignment. I thank them for their courtesy and diligence and the ruling they have offered to us.

(The remarks of Mr. DURBIN are printed in today's RECORD under ''Morning Business.'')

Mr. DURBIN. Mr. President, I am prepared to yield the floor, but I would like to give the Senator from Virginia or any other Senator on the floor an opportunity to claim the time. Otherwise, I will raise the question of the presence of a quorum.

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. 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.

Mr. REID. Mr. President, I have conferred with the two managers—I was going to say more than I wanted to, but I will not say that, but I conferred with the two managers often tonight, and it appears the Senate will be best served by clearing a number of amendments that the two managers have worked on for several days now. They have approximately a dozen amendments. They would do that tonight.

I put this in the form of a unanimous consent request: that tomorrow morning, when the Senate convenes, after the prayer and the pledge, we would move to the Boxer amendment, which is a post-Iraq war contracting matter, and that there would be 45 minutes of debate on that amendment—30 minutes under the control of Senator BOXER, 15 minutes under the control of Senator WARNER—and in keeping with the usual unanimous consent request for second-degree amendments that we have done throughout the day; and that following that, we could move to perhaps the Daschle amendment, perhaps the Dodd amendment.

We are really getting few amendments over here. We all recognize we have to dispose of the relevant amendment that Senator MURRAY filed this afternoon. And Senator BROWNBACK, Senator WARNER, and others will work on that tonight to see what is contemplated regarding that tomorrow.

So the only unanimous consent request I make tonight is that in the morning we go to the Boxer amendment in keeping with the request I just made.

Mr. WARNER. Mr. President, reserving the right to object, could I have just another 3 minutes to determine if there is a problem on our side with that? And I regret that I could not tell you before you started.

Mr. REID. I suggest the absence of a quorum.

Mr. WARNER. Fine. Thank you.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. 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. WARNER. Mr. President, I know colleagues and others are following the proceedings on the floor tonight. We have been able to achieve quite a good deal. As the distinguished Democratic leader mentioned, we will proceed now to 12 amendments which have been cleared on both sides.

AMENDMENT NO. 792

Mr. WARNER. Mr. President, on behalf of myself, I offer an amendment which realigns funds during the committee markup for the Joint Engineering Data Management Information and Control System from the Navy procurement to the Navy research development, test and evaluation accounts. I believe this amendment is cleared on the other side.

Mr. LEVIN. Mr. President, it is indeed cleared.

Mr. WARNER. I urge the Senate to adopt the amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 792.

The amendment is as follows:

(Purpose: To correct the authorization of appropriations for the Joint Engineering Data Management Information and Control System (JEDMICS) so as to be provided for in Navy RDT&E (PE 0603739N) instead of Navy procurement)

On page 25, between lines 11 and 12, insert the following:

SEC. 213. AMOUNT FOR JOINT ENGINEERING DATA MANAGEMENT INFORMATION AND CONTROL SYSTEM.

(a) NAVY RDT&E.—The amount authorized to be appropriated under section 201(2) is hereby increased by $2,500,000. Such amount may be available for the Joint Engineering Data Management Information and Control System (JEDMICS).

(b) NAVY PROCUREMENT.—The amount authorized to be appropriated under section 102(a)(4) is hereby reduced by $2,500,000, to be derived from the amount provided for the Joint Engineering Data Management Information and Control System (JEDMICS).

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, without objection, the amendment is agreed to.

The amendment (No. 792) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, I ask unanimous consent that the pending amendment be set aside for the duration of this and all other amendments which Senator WARNER and I are offering this evening.

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

AMENDMENT NO. 793

Mr. LEVIN. Mr. President, on behalf of Senators WYDEN, COLLINS, CLINTON, BYRD, and LAUTENBERG, I offer an amendment which requires a report on contracting for the reconstruction of Iraq.

Mr. WARNER. Mr. President, this amendment has been cleared.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. WYDEN, Ms. COLLINS, Mrs. CLINTON, Mr. BYRD, and Mr. LAUTENBERG, proposes an amendment numbered 793.

The amendment is as follows:

(Purpose: To provide for the reporting requirement regarding Iraq to include a requirement to report noncompetitive contracting for the reconstruction of the infrastructure of Iraq)

On page 273, between lines 20 and 21, insert the following:

(d) REPORTING REQUIREMENT RELATING TO NONCOMPETITIVE CONTRACTING FOR THE RECONSTRUCTION OF INFRASTRUCTURE OF IRAQ.—(1) If a contract for the maintenance, rehabilitation, construction, or repair of infrastructure in Iraq is entered into under the oversight and direction of the Secretary of Defense or the Office of Reconstruction and Humanitarian Assistance in the Office of the Secretary of Defense without full and open competition, the Secretary shall publish in the Federal Register or Commerce Business Daily and otherwise make available to the public, not later than 30 days after the date on which the contract is entered into, the following information:

(i) The amount of the contract.

(ii) A brief description of the scope of the contract.

(iii) A discussion of how the executive agency identified, and solicited offers from, potential contractors to perform the contract, together with a list of the potential contractors that were issued solicitations for the offers.

(iv) The justification and approval documents on which was based the determination to use procedures other than procedures that provide for full and open competition.

(B) Subparagraph (A) does not apply to a contract entered into more than one year after date of enactment.

(2)(A) The head of an executive agency may—

(i) withhold from publication and disclosure under paragraph (1) any document that is classified for restricted access in accordance with an Executive order in the interest of national defense or foreign policy; and

(ii) redact any part so classified that is in a document not so classified before publication and disclosure of the document under paragraph (1).

(B) In any case in which the head of an executive agency withholds information under subparagraph (A), the head of such executive agency shall make available an unredacted version of the document containing that information to the chairman and ranking member of each of the following committees of Congress:

(i) The Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(ii) The Committees on Appropriations of the Senate and the House of Representatives.

(iii) Each committee that the head of the executive agency determines has legislative jurisdiction for the operations of such department or agency to which the information relates.

(3) This subsection shall apply to contracts entered into on or after October 1, 2002, except that, in the case of a contract entered into before the date of the enactment of this Act, paragraph (1) shall be applied as if the contract had been entered into on the date of the enactment of this Act.

(4) Nothing in this subsection shall be construed as affecting obligations to disclose United States Government information under any other provision of law.

(5) In this subsection, the terms ''executive agency'' and ''full and open competition'' have the meanings given such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

Ms. COLLINS. Mr. President, my colleague from Oregon, Senator WYDEN, and I have offered this amendment that will pull back the curtain on government contracts to rebuild post-war Iraq, one of the most ambitious reconstruction projects since World War II.

The government already has awarded numerous contracts towards this purpose. These contracts provide for an enormous scope of goods and services ranging from capital construction to the administration of key air and sea port facilities to the rebuilding of Iraq's education and health systems. One contract even provides for such fundamentals as teaching local leaders about the basics of the democratic process.

In all, billions of Federal taxpayer dollars are being spent. It is Congress's job to ensure that they are spent wisely and fairly.

Our amendment would ensure that the basic facts regarding these and other contracts for the rebuilding of Iraq are publicly available. For those contracts that have been awarded outside of the usual process of full and open competition, our amendment would require that, within 30 days of entering the contract, the contract's price, the scope of the work to be performed, the contractors asked to bid, and the criteria by which they were chosen must be made known, through publication in the Federal Register.

In addition, the agency head also would need to make publicly available the justification for awarding the contract on a basis less than the full and open competition standard.

These provisions have become necessary because of the way in which Federal agencies contracting for goods and services in Iraq have been awarding these contracts.

Not a single Iraq reconstruction contract has been awarded on the basis of ''full and open competition'' embodied in the 1984 Competition in Contracting Act, whereby interested parties are notified and given a chance to bid. The rationale for this standard was not only to provide basic fairness for all potential bidders, but also to reassure the public that their tax dollars were being spent wisely and in the public interest.

Instead, these contracts have either been awarded on the basis of limited competition, where the bidders are handpicked, or, in some cases, without any competition at all.

The agencies involved generally have singled out a small number of bidders based on the agency's preconceived notions about the bidders' ability to perform the contract. Such a process, we are told, was necessitated by the short time frame in which the contracts had to be planned and awarded.

Such a process, however, necessarily raises questions regarding fundamental fairness and impartiality and whether tax money is being spent in a responsible manner. Because we don't have all of the facts regarding these contracts, speculation has arisen over their content, their price tags, and the basis of their awards.

For example, I was distressed to learn that a sole source contract entered into by the United States Army Corps of Engineers called for much more work to be performed than was initially indicated. This is because the Corps only released the information that it deemed relevant. Under our amendment, the public will be able to judge for itself whether the government was justified in awarding a contract bundle on less than full competition. The public deserves no less.

At the same time, we have included in our amendment provisions to ensure that classified material remains safe and is provided only to congressional committees with oversight authority.

It is my hope that the publication of the key information in these contracts will serve some of the same goals as the Competition in Contracting Act, such as reassuring the public that reconstruction in Iraq is being done in a fair manner and in furtherance of the public interest.

Alternatively, keeping these justifications secret defeats the legal safeguards that protect full and open competition. Further, it breeds what may be unjustified fear that the contracting process is being run for the benefit of a select few rather than the Iraqi people.

Ensuring that this information is available to the public will help maintain confidence that our work in rebuilding Iraq is being undertaken in a manner best calculated to advance the well-being of the Iraqi people, and will help dispel criticisms that the process by which these contracts are being awarded is unfair or unjustified.

I want to thank the distinguished chair and ranking member of the ASC

for working with Senator WYDEN and me on this amendment, which I understand will be made part of the manager's package.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, without objection, the amendment is agreed to.

The amendment (No. 793) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 794

Mr. WARNER. Mr. President, on behalf of Senator MCCAIN, I offer an amendment which makes the necessary technical changes to the National Call to Service Act which was enacted last year. This amendment, which was requested by the Department of Defense, will enable DOD to make payments for education benefits to volunteers under this program from the DOD education benefits program. This amendment has been cleared on the other side.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. MCCAIN, proposes an amendment numbered 794.

The amendment is as follows:

(Purpose: To provide for the funding of education assistance enlistment incentives to facilitate National service through Department of Defense Education Benefits Fund)

On page 109, between lines 9 and 10, insert the following:

SEC. 535. FUNDING OF EDUCATION ASSISTANCE ENLISTMENT INCENTIVES TO FACILITATE NATIONAL SERVICE THROUGH DEPARTMENT OF DEFENSE EDUCATION BENEFITS FUND.

(a) IN GENERAL.—Subsection (j) of section 510 of title 10, United States Code, is amended to read as follows:

''(j) FUNDING.—(1) Amounts for the payment of incentives under paragraphs (1) and (2) of subsection (e) shall be derived from amounts available to the Secretary of the military department concerned for the payment of pay, allowances and other expenses of the members of the armed force concerned.

''(2) Amounts for the payment of incentives under paragraphs (3) and (4) of subsection (e) shall be derived from the Department of Defense Education Benefits Fund under section 2006 of this title.''.

(b) CONFORMING AMENDMENTS.—Section 2006(b) of such title is amended—

(1) in paragraph (1), by inserting ''paragraphs (3) and (4) of section 510(e) and'' after ''Department of Defense benefits under''; and

(2) in paragraph (2), by adding at the end the following new subparagraph:

''(E) The present value of future benefits payable from the Fund for educational assistance under paragraphs (3) and (4) of section 510(e) of this title to persons who during such period become entitled to such assistance.''.

Mr. WARNER. I urge adoption of the amendment.

Mr. LEVIN. Would the Presiding Officer hold for one moment.

The amendment is agreed to on this side.

The PRESIDING OFFICER. Is there further debate on the amendment.

If not, without objection, the amendment is agreed to.

The amendment (No. 794) was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 795

Mr. WARNER. Mr. President, on behalf of Senator ROBERTS, I offer an amendment to enhance defense contracting opportunities for persons with disabilities. I believe this amendment has been cleared on both sides.

Mr. LEVIN. The amendment has been cleared. I urge the Senate to adopt it.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. ROBERTS, proposes an amendment numbered 795.

The amendment is as follows:

(Purpose: To enhance the defense contracting opportunities for persons with disabilities)

On page 81, strike lines 12 and 13, and insert the following:

SEC. 368. CONTRACTING WITH EMPLOYERS OF PERSONS WITH DISABILITIES.

On page 82, between lines 19 and 20, insert the following:

(e) DEMONSTRATION PROJECTS FOR CONTRACTORS EMPLOYING PERSONS WITH DISABILITIES.—(1) The Secretary of Defense may carry out two demonstration projects for the purpose of providing opportunities for participation by severely disabled individuals in the industries of manufacturing and information technology.

(2) Under each demonstration project, the Secretary may enter into one or more contracts with an eligible contractor for each of fiscal years 2004 and 2005 for the acquisition of—

(A) aerospace end items or components; or

(B) information technology products or services.

(3) The items, components, products, or services authorized to be procured under paragraph (2) include—

(A) computer numerically-controlled machining and metal fabrication;

(B) computer application development, testing, and support in document management, microfilming, and imaging; and

(C) any other items, components, products, or services described in paragraph (2) that are not described in subparagraph (A) or (B).

(4) In this subsection:

(A) The term ''eligible contractor'' means a business entity operated on a for-profit or nonprofit basis that—

(i) employs not more than 500 individuals;

(ii) employs severely disabled individuals at a rate that averages not less than 33 percent of its total workforce over a period prescribed by the Secretary;

(iii) employs each severely disabled individual in its workforce generally on the basis of 40 hours per week;

(iv) pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) to the employees who are severely disabled individuals;

(v) provides for its employees health insurance and a retirement plan comparable to those provided for employees by business entities of similar size in its industrial sector or geographic region; and

(vi) has or can acquire a security clearance as necessary.

(B) The term ''severely disabled individual'' means an individual with a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)) who has a severe physical or mental impairment that seriously limits one or more functional capacities.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, without objection, the amendment is agreed to.

The amendment (No. 795) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 759

Mr. LEVIN. Mr. President, on behalf of Senator BILL NELSON, I offer an amendment that expresses the sense of the Senate that the Secretary of Defense should authorize and publicize a reward of $1 million for information leading to a conclusive resolution of the cases of missing members of the Armed Forces.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. NELSON of Florida, proposes an amendment numbered 759.

Mr. LEVIN. 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:

(Purpose: Expressing the sense of the Senate that the Secretary of Defense should disburse funds to reward the provision of information leading to the resolution of the status of the members of the Armed Forces of the United States who remain missing in action)

At the end of subtitle D of title X, add the following:

SEC. 1039. SENSE OF SENATE ON REWARD FOR INFORMATION LEADING TO RESOLUTION OF STATUS OF MEMBERS OF THE ARMED FORCES WHO REMAIN MISSING IN ACTION.

(a) FINDINGS.—The Senate makes the following findings:

(1) The Department of Defense estimates that there are more than 10,000 members of the Armed Forces and others who as a result of activities during the Korean War or the Vietnam War were placed in a missing status or a prisoner of war status, or who were determined to have been killed in action although the body was not recovered, and who remain unaccounted for.

(2) One member of the Armed Forces, Navy Captain Michael Scott Speicher, remains missing in action from the first Persian Gulf War, and there have been credible reports of him being seen alive in Iraq in the years since his plane was shot down on January 16, 1991.

(3) The United States should always pursue every lead and leave no stone unturned to completely account for the fate of its missing members of the Armed Forces.

(4) The Secretary of Defense has the authority to disburse funds as a reward to individuals who provide information leading to the conclusive resolution of cases of missing members of the Armed Forces.

(b) SENSE OF SENATE.—It is the sense of the Senate—

(1) that the Secretary of Defense should use the authority available to the Secretary to disburse funds rewarding individuals who provide information leading to the conclusive resolution of the status of any missing member of the Armed Forces; and

(2) to encourage the Secretary to authorize and publicize a reward of $1,000,000 for information resolving the fate of those members of the Armed Forces, such as Michael Scott Speicher, who the Secretary has reason to believe may yet be alive in captivity.

Mr. WARNER. Mr. President, I want to consult with my colleague about this.

Senator LEVIN and I have read the text of the amendment. The text of the amendment is quite clear as to what the intent was of the proponent. We have no objection on this side.

The PRESIDING OFFICER. Is there further debate on the amendment.

If not, without objection, the amendment is agreed to.

The amendment (No. 759) was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 740

Mr. WARNER. Mr. President, on behalf of Senator DOMENICI, I offer an amendment to provide military health care entitlement to Reserve officers awaiting orders to active duty. It has been cleared on both sides.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follow:

The Senator from Virginia, [Mr. WARNER], for Mr. DOMENICI, proposes an amendment numbered 740.

The amendment is as follows:

(Purpose: To provide entitlement to health care for reserve officers of the Armed Forces pending orders to initial active duty following commissioning)

At the appropriate place in title VII, insert the following:

SEC. ___. ELIGIBILITY OF RESERVE OFFICERS FOR HEALTH CARE PENDING ORDERS TO ACTIVE DUTY FOLLOWING COMMISSIONING.

Section 1074(a) of title 10, United States Code, is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) by striking ''who is on active duty'' and inserting ''described in paragraph (2)''; and

(3) by adding at the end the following new paragraph:

''(2) Members of the uniformed services referred to in paragraph (1) are as follows:

''(A) A member of a uniformed service on active duty.

''(B) A member of a reserve component of a uniformed service who has been commissioned as an officer if—

''(i) the member has requested orders to active duty for the member's initial period of active duty following the commissioning of the member as an officer;

''(ii) the request for orders has been approved;

''(iii) the orders are to be issued but have not been issued; and

''(iv) the member does not have health care insurance and is not covered by any other health benefits plan.''.

The PRESIDING OFFICER. Is there any further debate?

If not, without objection, the amendment is agreed to.

The amendment (No. 740) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 796

Mr. LEVIN. Mr. President, on behalf of Senators FEINSTEIN and STEVENS, I offer an amendment to prohibit funding from being used in fiscal 2004 for research, development, test and evaluation, procurement, or deployment of nuclear-tipped ballistic missile defense intercepts.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mrs. FEINSTEIN and Mr. STEVENS, proposes an amendment numbered 796.

The amendment is as follows:

(Purpose: To prohibit the use of funds for research, development, test, and evaluation, procurement, or deployment of nuclear armed interceptors in a missile defense system)

At the end of subtitle C of title II, add the following:

SEC. 225. PROHIBITION ON USE OF FUNDS FOR NUCLEAR ARMED INTERCEPTORS IN MISSILE DEFENSE SYSTEMS.

No funds authorized to be appropriated for the Department of Defense by this Act may be obligated or expended for research, development, test, and evaluation, procurement, or deployment of nuclear armed interceptors in a missile defense system.

The PRESIDING OFFICER. Is there further debate?

If not, without objection, the amendment is agreed to.

The amendment (No. 796) was agreed to.

Mr. LEVIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 700

Mr. WARNER. Mr. President, on behalf of Senator LOTT, I offer an amendment which would express the sense of the Senate that the Senate strongly supports the Advanced Shipbuilding Enterprise of the National Shipbuilding Research Program, and that the Secretary of Defense and the Secretary of the Navy should continue to fund this program at a sustaining level.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 700.

The amendment is as follows:

(Purpose: To express the sense of the Senate in support of the Advanced Shipbuilding Enterprise of the National Shipbuilding Research Program)

On page 291, between lines 14 and 15, insert the following:

SEC. 1039. ADVANCED SHIPBUILDING ENTERPRISE.

(a) FINDINGS.—Congress makes the following findings:

(1) The President's budget for fiscal year 2004, as submitted to Congress, includes $10,300,000 for the Advanced Shipbuilding Enterprise of the National Shipbuilding Research Program.

(2) The Advanced Shipbuilding Enterprise is an innovative program to encourage greater efficiency among shipyards in the defense industrial base.

(3) The leaders of the Nation's shipbuilding industry have embraced the Advanced Shipbuilding Enterprise as a method of exploring and collaborating on innovation in shipbuilding and ship repair that collectively benefits all manufacturers in the industry.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Senate strongly supports the innovative Advanced Shipbuilding Enterprise of the National Shipbuilding Research Program that has yielded new processes and techniques to reduce the cost of building and repairing ships in the United States;

(2) the Senate is concerned that the future-years defense program submitted to Congress for fiscal year 2004 does not reflect any funding for the Advanced Shipbuilding Enterprise after fiscal year 2004; and

(3) the Secretary of Defense and the Secretary of the Navy should continue funding the Advanced Shipbuilding Enterprise at a sustaining level through the future-years defense program to support subsequent rounds of research that reduce the cost of designing, building, and repairing ships.

SHIPBUILDING

Mr. LOTT. Mr. President, I first want to acknowledge the hard work done by the Armed Services Committee and Senator WARNER and his staff on the fiscal year 2004 defense authorization bill. Having served on this committee for many years, I know how intense the discussions are in the committee and how difficult the decisions are when crafting a bill this complex and so critical. I do, however, want to engage the chairman on a subject of great national interest: Navy ship construction.

Over the years, this country has seen a steady decline in not only our naval ship force structure, but in the capacity to construct these great warships. Instead of building the requisite 12 ships a year to maintain our current and modest naval capability, we are merely producing 6 to 7 per year. The erosion in our naval capability should not continue. I know this is a subject of acute interest by Chairman WARNER, a former Secretary of the Navy, and would like to hear his thoughts on the issue!

Mr. WARNER. The level of shipbuilding is clearly of concern to me. The Navy is in transition, and we find ourselves building the last of the older 20th century surface combatants, submarines, aircraft carriers, and amphibious assault ships and transitioning to those ships of the line for the 21st century. Understandably, there is a development period we are involved in as

well as recapitalization. The committee chose to support the Navy's proposals for DDX, LCS, LHA(R), LPD and CVN–21. These are the naval vessels of the future.

Mr. BREAUX. As the Senator knows well, this transition period has a substantial impact on the shipyards and their workers who will be asked to construct these future vessels. After the decline in shipbuilding in the last quarter century, our ability to build naval ships of all kinds has been substantially reduced. During this period of transition, I am concerned, as well as you, that the shipyards retain their engineers and workers, so they may build the next generation of ships when these ships are mature.

Mr. WARNER. They key here is balance during the transition period. The ongoing global war on terrorism places enormous budgetary pressure on the Defense bills. For example, we were certainly aware that the LPD–17 design is in production, but at a very low rate. The committee supported funding for the fiscal year 2004 ship. I also understand that the Navy is attempting to accelerate production to allow procurement of a ship in fiscal year 2005.

Ms. LANDRIEU. The LPD–17 is certainly an excellent example of the dilemma posed in our Navy's shipbuilding program. I am hopeful that as we move through the authorization process, some accommodation will be found to move that shipbuilding program along. Certainly, this ship class, if produced at greater levels can clear the decks, so to speak, for the other, advanced ships, which are in development now.

Mr. WARNER. I acknowledge the Senator's comments and concerns.

The PRESIDING OFFICER. Is there further debate?

If not, without objection, the amendment is agreed to.

The amendment (No. 700) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 779

Mr. WARNER. On behalf of Senator ALLARD, I offer an amendment on the protection of the operational files of the National Security Agency that would strike section 1035 of S. 1050 and replace it with this amendment. It is cleared on both sides.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. ALLARD, proposes an amendment numbered 779.

The amendment is as follows:

(Purpose: To provide a substitute for section 1035, relating to the protection of the operational files of the National Security Agency)

Strike section 1035 and insert the following:

SEC. 1035. PROTECTION OF OPERATIONAL FILES OF THE NATIONAL SECURITY AGENCY.

(a) CONSOLIDATION OF CURRENT PROVISIONS ON PROTECTION OF OPERATIONAL FILES.—The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by transferring sections 105C and 105D to the end of title VII and redesignating such sections, as so transferred, as sections 703 and 704, respectively.

(b) PROTECTION OF OPERATIONAL FILES OF NSA.—Title VII of such Act, as amended by subsection (a), is further amended by adding at the end the following new section:

''OPERATIONAL FILES OF THE NATIONAL SECURITY AGENCY

''SEC. 705. (a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) Operational files of the National Security Agency (hereafter in this section referred to as 'NSA') may be exempted by the Director of NSA, in coordination with the Director of Central Intelligence, from the provisions of section 552 of title 5, United States Code, which require publication, disclosure, search, or review in connection therewith.

''(2)(A) In this section, the term 'operational files' means—

''(i) files of the Signals Intelligence Directorate, and its successor organizations, which document the means by which foreign intelligence or counterintelligence is collected through technical systems; and

''(ii) files of the Research Associate Directorate, and its successor organizations, which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.

''(B) Files which are the sole repository of disseminated intelligence, and files that have been accessioned into NSA Archives, or its successor organizations, are not operational files.

''(3) Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—

''(A) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5, United States Code;

''(B) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code; or

''(C) the specific subject matter of an investigation by any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:

''(i) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

''(ii) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

''(iii) The Intelligence Oversight Board.

''(iv) The Department of Justice.

''(v) The Office of General Counsel of NSA.

''(vi) The Office of the Inspector General of the Department of Defense.

''(vii) The Office of the Director of NSA.

''(4)(A) Files that are not exempted under paragraph (1) which contain information derived or disseminated from exempted operational files shall be subject to search and review.

''(B) The inclusion of information from exempted operational files in files that are not exempted under paragraph (1) shall not affect the exemption under paragraph (1) of the originating operational files from search, review, publication, or disclosure.

''(C) The declassification of some of the information contained in exempted operational files shall not affect the status of the operational file as being exempt from search, review, publication, or disclosure.

''(D) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under paragraph (1), and which have been returned to exempted operational files for sole retention shall be subject to search and review.

''(5) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004, and which specifically cites and repeals or modifies such provisions.

''(6)(A) Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that NSA has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

''(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

''(i) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by NSA, such information shall be examined ex parte, in camera by the court.

''(ii) The court shall determine, to the fullest extent practicable, the issues of fact based on sworn written submissions of the parties.

''(iii) When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.

''(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NSA shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsible records currently perform the functions set forth in paragraph (2).

''(II) The court may not order NSA to review the content of any exempted operational file or files in order to make the demonstration required under subclause (I), unless the complainant disputes NSA's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

''(v) In proceedings under clauses (iii) and (iv), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

''(vi) If the court finds under this paragraph that NSA has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order NSA to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code, and such order shall be the exclusive remedy for failure to comply with this subsection.

''(vii) If at any time following the filing of a complaint pursuant to this paragraph NSA agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

''(viii) Any information filed with, or produced for the court pursuant to clauses (i) and (iv) shall be coordinated with the Director of Central Intelligence before submission to the court.

''(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—(1) Not less than once every 10 years, the Director of the National Security Agency and the Director of Central Intelligence shall review the exemptions in

force under subsection (a)(1) to determine whether such exemptions may be removed from a category of exempted files or any portion thereof. The Director of Central Intelligence must approve any determination to remove such exemptions.

''(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of a particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

''(3) A complainant that alleges that NSA has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining the following:

''(A) Whether NSA has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004 or before the expiration of the 10-year period beginning on the date of the most recent review.

''(B) Whether NSA, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.''.

(c) CONFORMING AMENDMENTS.—(1) Section 701(b) of the National Security Act of 1947 (50 U.S.C. 431(b)) is amended by striking ''For purposes of this title'' and inserting ''In this section and section 702,''.

(2) Section 702(c) of such Act (50 U.S.C. 432(c)) is amended by striking ''enactment of this title'' and inserting ''October 15, 1984,''.

(3)(A) The title heading for title VII of such Act is amended to read as follows:

''TITLE VII—PROTECTION OF OPERATIONAL FILES''.

(B) The section heading for section 701 of such Act is amended to read as follows:

''PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY''.

(C) The section heading for section 702 of such Act is amended to read as follows:

''DECENNIAL REVIEW OF EXEMPTED CENTRAL INTELLIGENCE AGENCY OPERATIONAL FILES.''.

(d) CLERICAL AMENDMENTS.—The table of contents for the National Security Act of 1947 is amended—

(1) by striking the items relating to sections 105C and 105D; and

(2) by striking the items relating to title VII and inserting the following new items:

''TITLE VII—PROTECTION OF OPERATIONAL FILES

''Sec. 701. Protection of operational files of the Central Intelligence Agency.

''Sec. 702. Decennial review of exempted Central Intelligence Agency operational files.

''Sec. 703. Protection of operational files of the National Imagery and Mapping Agency.

''Sec. 704. Protection of operational files of the National Reconnaissance Office.

''Sec. 705. Protection of operational files of the National Security Agency.''.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, without objection, the amendment is agreed to.

The amendment (No. 779) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 746, AS MODIFIED

Mr. LEVIN. Mr. President, on behalf of Senator DODD, I offer an amendment which requires the Army to study the use of a second source of production for gears incorporated into CH–47 helicopter transmissions.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. DODD, proposes an amendment numbered 746, as modified.

The amendment is as follows:

(Purpose: To require an Army study regarding use of a second source of production for gears incorporated into helicopter transmissions for CH–47 helicopters)

On page 17, strike line 11 and insert the following:

SEC. 111. CH–47 HELICOPTER PROGRAM.

(a) REQUIREMENT FOR STUDY.—The Secretary of the Army shall study the feasibility and the costs and benefits of providing for the participation of a second source in the production of gears for the helicopter transmissions incorporated into CH–47 helicopters being procured by the Army with funds authorized to be appropriated by this Act.

(b) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit a report on the results of the study to Congress.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, without objection, the amendment is agreed to.

The amendment (No. 746), as modified, was agreed to.

Mr. LEVIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 784

Mr. WARNER. On behalf of Senator CHAMBLISS, I offer an amendment to require the National Imagery and Mapping Agency to provide a report on certain imagery exploitation capabilities. It is cleared on both sides.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. CHAMBLISS, proposes an amendment numbered 784.

The amendment is as follows:

(Purpose: To require a report on the efforts of the National Geospatial-Intelligence Agency to utilize certain data extraction and exploitation capabilities within the Commercial Joint Mapping Tool Kit (C/JMTK))

On page 226, between the matter following line 14 and line 15, insert the following:

(c) REPORT ON UTILIZATION OF CERTAIN DATA EXTRACTION AND EXPLOITATION CAPABILITIES.—(1) Not later than 60 days after the date of the enactment of this Act, the Director of the National Geospatial-Intelligence Agency shall submit to the appropriate committees of Congress a report on the status of the efforts of the Agency to incorporate within the Commercial Joint Mapping Tool Kit (C/JMTK) applications for the rapid extraction and exploitation of three-dimensional geospatial data from reconnaissance imagery.

(2) In this subsection, the term ''appropriate committees of Congress'' means—

(A) the Committee on Armed Services, the Subcommittee on Defense of the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services, the Subcommittee on Defense of the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

The PRESIDING OFFICER. Is there further debate on the amendment.

If not, without objection, the amendment is agreed to.

The amendment (No. 784) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 797

Mr. LEVIN. Mr. President, I offer an amendment on behalf of Senator LIEBERMAN that would provide for a Department of Defense strategy for the management of the electromagnetic spectrum. I believe it is cleared on both sides.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. LIEBERMAN, proposes an amendment numbered 797.

The amendment is as follows:

(Purpose: To provide for a strategy for the Department of Defense for the management of the electromagnetic spectrum)

At the end of subtitle D of title II, add the following:

SEC. 235. DEPARTMENT OF DEFENSE STRATEGY FOR MANAGEMENT OF ELECTROMAGNETIC SPECTRUM.

(a) IN GENERAL.—The Secretary of Defense shall—

(1) in accordance with subsection (b), develop a strategy for the Department of Defense for the management of the electromagnetic spectrum to improve spectrum access and high-bandwidth connectivity to military assets.

(2) in accordance with subsection (c), communicate with civilian departments and agencies of the Federal Government in the development of the strategy identified in (a)(1).

(b) STRATEGY FOR DEPARTMENT OF DEFENSE STRATEGY FOR SPECTRUM MANAGEMENT.—(1) Not later than September 1, 2004, the Board shall develop a strategy for the Department of Defense for the management of the electromagnetic spectrum in order to ensure the development and use of spectrum-efficient technologies to facilitate the availability of adequate spectrum for both network-centric warfare. The strategy shall include specific timelines, metrics, plans for implementation including the implementation of technologies for the efficient use of spectrum, and proposals for program funding.

(2) In developing the strategy, the Board shall consider and take into account in the strategy the research and development program carried out under section 234.

(3) The Board shall assist in updating the strategy developed under paragraph (1) on a

biennial basis to address changes in circumstances.

(4) The Board shall communicate with other departments and agencies of the Federal Government in the development of the strategy described in subsection (a)(1), including representatives of the military departments, the Federal Communications Commission, the National Telecommunications and Information Administration, the Department of Homeland Security, the Federal Aviation Administration, and other appropriate departments and agencies of the Federal Government.

(c) BOARD DEFINED.—In this section, the term ''Board'' means the Board of Senior Acquisition Officials as defined in section 822.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, without objection, the amendment is agreed to.

The amendment (No. 797) was agreed to.

Mr. LEVIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 739

Mr. WARNER. Mr. President, on behalf of Senator DOMENICI, I offer an amendment to authorize reimbursement for travel expenses of covered beneficiaries of CHAMPUS for specialty care in order to cover specialized dental care.

The amendment is cleared.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. DOMENICI, proposes an amendment numbered 739.

The amendment is as follows:

(Purpose: To expand reimbursement for travel expenses of covered beneficiaries of CHAMPUS for specialty care in order to cover specialized dental care)

At the appropriate place in title VII, insert the following:

SEC. ___. REIMBURSEMENT OF COVERED BENEFICIARIES FOR CERTAIN TRAVEL EXPENSES RELATING TO SPECIALIZED DENTAL CARE.

Section 1074i of title 10, United States Code, is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''In any case''; and

(2) by adding at the end the following new subsection:

''(b) SPECIALTY CARE PROVIDERS.—For purposes of subsection (a), the term 'specialty care provider' includes a dental specialist (including an oral surgeon, orthodontist, prosthodontist, periodontist, endodontist, or pediatric dentist).''.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 739) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 798

Mr. WARNER. Mr. President, I offer an amendment that would strike subsection (c) of section 2101 to authorize military construction projects for the Army. It is cleared on both sides.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 798.

The amendment is as follows:

(Purpose: To strike subsection (c) of section 2101 relating to unspecified worldwide military construction projects for the Army)

On page 322, strike line 8 and all that follows through page 324, line 10.

On page 326, strike lines 1 through 3.

On page 328, line 21, strike ''(1), (2), and (3)'' and insert ''(1) and (2)''.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, without objection, the amendment is agreed to.

The amendment (No. 798) was agreed to.

Mr. WARNER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, that concludes the total of cleared amendments that we can work on tonight. Our staffs will continue to work through the evening. Hopefully, another dozen or so will be ready first thing in the morning. I thank my distinguished colleague for his usual cooperation and advice.

Mr. LEVIN. I thank my good friend from Virginia. We are both in the debt of the Presiding Officer, who has been patient through some long delays. They have been essential.

Mr. WARNER. Our Parliamentarians have been put to the test and they deserve a measure of recognition for a job well done. I thank the Chair and the staff. If you think this has been a late night, wait until tomorrow.

Mr. LEVIN. Something to look forward to.

Mr. WARNER. I believe we are making good progress on this bill. It is my hope and, indeed, my expectation that we can complete this bill by midday tomorrow. I know that my colleague from Michigan and I, together with our respective leadership, are endeavoring to achieve that. When I made reference to tomorrow night, it related to other matters of legislation, not this bill.

Mr. LEVIN. A great sigh of relief.

Mr. WARNER. 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. BROWNBACK. 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. KENNEDY. Mr. President, I want to say a few words about an amendment that I had hoped to offer to help our troops and that has strong bipartisan support. But the Parliamentarian says it doesn't quite meet the relevance test under the consent agreement, so I will offer it on another day.

The amendment is intended to recognize the enormous contributions to our country by immigrants serving in the military. It gives immigrant men and women in our Armed Forces more rapid naturalization, and it establishes protections for their families if they are killed in action.

In all our wars, immigrants have fought side by side and given their lives to defend America's freedom and ideals. One out of every five recipients of the Congressional Medal of Honor, the highest honor our Nation bestows on our war heroes, has been an immigrant. Their bravery is unequivocal proof that immigrants are as dedicated as any other Americans to defending our country.

Today, 37,000 men and women in the Army, Navy, Marines, Air Force, and Coast Guard are not yet citizens, but have the status of permanent residents. Another 12,000 permanent residents are in the Reserves and the National Guard. Sadly, 10 immigrant soldiers were killed in Iraq; 2 are missing; and 2 were POWs. The President did the right thing by granting posthumous citizenship to those who died, but it is clear that we can do more to ease the path to citizenship for all immigrants who serve in our forces.

My amendment improves access to naturalization for permanent residents in the military and it protects spouses, children, and parents of soldiers killed in action by preserving their ability to file for permanent residence in the United States.

Specifically, the amendment reduces from 3 to 2 the number of years required for these immigrants to become naturalized citizens. It exempts them from paying naturalization filing fees, and it enables them to be naturalized while stationed abroad. Affordable and timely naturalization is the least we can do for those who put their lives on the line to defend our nation.

During times of war, recruiting needs are immediate and readiness is essential. Even though the war in Iraq has ended, our commitment to ending global terrorism will continue, and more of these brave men and women will be called to active duty. Many of them are members of the Selected Reserve—Reserve and National Guard members who may be called up for active duty during a war or other national emergency. Many have already been activated, and many more could be called up at a moment's notice to defend our country and assist in military operations.

Over the years, Reserve and Guard units have often become full partners with their active-duty counterparts. Their active-duty colleagues cannot go to war without them. Being a member of the Selected Reserves is nothing less than a continuing commitment to meet very demanding standards, and they deserve recognition for their bravery and sacrifice. The amendment allows permanent resident members of

the Selected Reserves to expedite their naturalization applications during war or military hostilities.

Finally, the amendment provides immigration protection to immediate family members of soldiers killed in action. Grieving mothers, fathers, spouses, and children would be given the opportunity to legalize their immigration status and avoid deportation in the event of death of their loved one serving in our military. We know the tragic losses endured by these families, and it is unfair that they lose their immigration status as well.

The provisions of the amendment are identical to those in S. 922, the Naturalization and Family Protection for Military Members Act, which has strong bipartisan support and is also endorsed by numerous veterans organizations including: the Veterans of Foreign Wars, the Air Force Sergeants Association, the Non-Commissioned Officers Association, and the Blue Star Mothers of America.

The amendment is a tribute to the sacrifices that these future Americans are already making now for their adopted country. They deserve this important recognition and I look forward to working with my colleagues to see that these provisions are enacted into law.

Mr. VOINOVICH. Mr. President, I rise today to express my disappointment that the Senate is not able to act on my amendment to the Defense Authorization bill: the NASA Workforce Flexibility Act. NASA and DoD have a long history of collaboration on numerous programs that are central to the success of each agency and the expertise NASA provides DoD is critical to our national security.

For over a year, NASA has been discussing with us the impending crisis within their workforce. In March, my Subcommittee on Oversight of Government Management and the Federal Workforce held a hearing on this very issue. Of great concern to me is the fact that 15 percent of NASA's workforce currently is eligible to retire; that number climbs to 25 percent in just five short years. Also disconcerting is the fact that scientists and engineers over age 60 outnumber those under age 30 by nearly three to one.

With so many experienced people eligible to retire in the next few years, who knows how much institutional knowledge and expertise is going to walk out the door? This creates substantial risk to NASA and our national security.

During the war in Iraq, we saw some of the tremendous benefit our advanced technology provides to our troops. Many people may not be aware that NASA and DoD collaboration is central to providing for our national security.

We have many examples in my own State of Ohio. As the former Mayor of Cleveland and Governor of Ohio, I have seen firsthand the collaboration between the NASA Glenn Research Center in Cleveland and Wright-Patterson Air Force Base in Dayton.

In Ohio alone, NASA and DoD work together on projects that include: Joint fuel cell research to be used in space applications, Army use of Glenn Research Center expertise in testing helicopter rotor engines, and Navy use of Glenn Research Center expertise in missile propulsion program.

These joint efforts are not limited to Ohio; this collaboration exists nationwide. At other Centers throughout the Nation DoD depends on NASA facilities, such as its wind tunnels, for development and testing of all military aircraft, including the Joint Strike Fighter; DoD relies on NASA for technical assistance in investigating and correcting DoD flight problems; the National Aerospace Initiative, formed at the direction of the Presidential Commission on the Future of Aerospace, is a joint DoD-NASA project to develop the future of aerospace technology that is critical to national defense.

The American Helicopter Society awarded the 2002 Howard Hughes Award to NASA's Langley Research Center. Established in 1977, the Howard Hughes award is given in recognition of accomplishments in the helicopter industry. NASA partnered with the Army, and working in conjunction with academia and the private sector, developed what it calls ''Tilt Rotor Aeroacoustics Code.'' This is the technology to reduce the noise generated by helicopter rotors.

My amendment addresses NASA's current and future workforce needs. It would direct NASA to work with OPM and its employees to develop an agency-wide workforce plan.

In the highly competitive science and engineering fields, my amendment would authorize NASA to offer enhanced recruitment and relocation bonuses to attract and retain top talent. It also would allow NASA to offer a mid-career individual in the private sector a vacation package competitive with the private sector and comparable to career federal employees. In addition, my amendment would establish a competitive scholarship program for students in return for employment at NASA.

Mr. President, this body took remarkable action last year when it included in the creation of the Department of Homeland Security the first major governmentwide reforms to the civil service in 25 years, since 1978. That was a good first step, but we have much more work to do. I am concerned that human capital remains on GAO's high-risk list for 2003 throughout the federal government.

In such a critical area as national security, it is clear that the Department of Defense needs NASA. And NASA needs workforce reform.

Mr. CORNYN. Mr. President, I rise today to say a few words regarding the Defense Authorization Act.

On Saturday of last week, May 17, people all across our Nation commemorated Armed Forces Day. As President Eisenhower wrote in 1953: ''It is fitting and proper that we devote one day each year to paying special tribute to those whose constancy and courage constitute one of the bulwarks guarding the freedom of this Nation and the peace of the free world.''

I agree with that sentiment but I would also say that it is fitting and proper to pay tribute to the heroism and sacrifice of our brave men and women in the Armed Forces on each and every day.

We must always remember that our own freedom was not won without cost, but bought and paid for by the sacrifices of generations that have gone before. We must take every opportunity to honor these heroes for their courage and their commitment to the dream that is freedom.

I know I speak for the people of my State of Texas, and for all Americans, when I give thanks that the operation in Iraq has recently reached such a swift conclusion, with so few coalition lives lost.

One in 10 active-duty military personnel call Texas their home, and as a member of the Armed Services Committee, I am dedicated to looking after their interests and the interests of all of our military personnel. We must ensure that the United States military has the training, the equipment, and the facilities they require to remain the greatest fighting force the world has ever known, in times of war and peace.

I support this legislation because it is focused on that goal. And I would like to take this opportunity to thank the distinguished Senators from Virginia and Michigan for their hard work and leadership as chairman and ranking member of the Armed Services Committee.

As members of the committee, we have recommended a $17.9 billion increase above the amount appropriated by the Congress last year. This funding will enhance the ability of the Department of Defense to fulfill its homeland defense responsibilities, and sustain the ability of our Armed Forces to conduct military operations with the fewest lives lost.

We also addressed a number of other defense priorities in this bill, including a 3.7 percent across-the-board pay raise for all uniformed service personnel, an increase in the family separation allowance from $100 per month to $250 per month, and an increase in the special pay rate for duty in imminent danger from $150 per month to $225 per month.

The only area where I do want to draw some distinctions between my own position and the position of this bill concerns the F/A–22 aircraft. The committee's decision to decrease funding for the F/A–22 Raptor by $217 million, representing two fighters, simply does not make sense to me.

The F/A–22 is our next generation fighter aircraft, and it will serve to replace the aging fighters currently in

our inventory. President Bush requested funding for 22 Raptors, and I believe we should fulfill that request. Reducing our funding in response to the President's budget request will only raise questions about our commitment to this program, unsettle the confidence of the subcontractors and suppliers, and ultimately make the entire program more expensive.

Overall, the committee has produced a good bill. These pay raises are needed and deserved. The funding provides for much-needed support for our military infrastructure and equipment. And I am proud to support these measures.

I would also like to take this opportunity to thank Chairman WARNER for including language in the legislation which directs the Department of Defense to determine if any additional measures can be taken to assist the naturalization of qualified service members and their families.

This language is consistent with the Military Citizenship Act, a bill that I recently introduced, that will expedite the naturalization process for the nearly 37,000 men and women serving in our Armed Forces who are not U.S. citizens. I believe there is no better way to honor the heroism and sacrifice of those who serve than to offer them the American citizenship they deserve.

As we labor on this bill, we should take care to remember the sacrifices—not just the sacrifices of the brave men and women who fight on the battlefield, but also the sacrifices of the families they leave behind.

I remember watching as the deployment was occurring from Camp Lejeune, where a young mother with her child was saying goodbye to her husband. I will never forget her words. She said: ''I used to think that if he loved us, he would never leave us. But now I know that he is leaving us because he loves us.''

We as a grateful Nation thank the brave men and women who serve in uniform for the cause of freedom. We wish them all godspeed, and we hope and pray for their swift return to the loving arms of their families.

Mr. SUNUNU. Mr. President, I rise today to congratulate the Senator from Virginia, Mr. WARNER, the chairman of the Armed Services Committee, and the Senator from Michigan, Mr. LEVIN, the ranking member of the Armed Services Committee, for the work they have done to bring before the Senate a Defense authorization bill that will serve as a blueprint to ensure the U.S. Armed Forces have the resources they need in the upcoming fiscal year and beyond.

The Department of Defense faces many challenges in carrying out its various missions across the globe. This legislation authorizes critical funds to make sure our troops have the weapons systems and munitions they need to continue to do the outstanding work they do every day for our freedom, allowing for $75.6 billion in procurement funding. The legislation does right by these men and women and their families by providing them with a pay raise of 3.7 percent. Moreover, it mandates a $100 a month pay incentive for military personnel in North Korea, increases the family separation allowance $150 a month, increases hostile fire and imminent duty pay by an additional $175 a month, and doubles the death gratuity retroactive to September 11, 2001.

S. 1050 not only addresses the short-term needs of the military but gives equal consideration to the long-term challenges facing the services. The $63.2 billion authorized in the bill for research and development is critically needed to make sure our troops will continue to have access to the most advanced equipment to keep them safe and one step ahead of those who would do us harm. We have seen on countless occasions over the last several months how investments in research and development lead to a fighting force capable of unprecedented precision and mobility, which saves lives and allows for decisive military victories.

This legislation addresses some important nonfinancial policy issues as well. S. 1050 strikes a balance between environmental protection and the need to provide our troops with important training. It allows for the examination and evaluation of weapons and countermeasure systems to make sure current and future Presidents and military leaders have all options available to them when making decisions pertaining to military action and national security. The bill also provides tens of millions of dollars to aid in homeland defense initiatives such as the Chemical and Biological Installation/Force Protection Program, and the WMD civil support teams.

I recognize this measure is not perfect and there are some funding and policy provisions on which Senators may disagree. For example, I am very concerned by the committee's decision to cut the President's request for the procurement of 22 F/A–22 Raptors. Yet I know these and other issues will continue to be addressed by both the committee and the administration as this bill moves forward and should not be cause to delay passage of this important piece of legislation.

I am pleased to support S. 1050, and I thank the chairman and ranking member for their work.

Mr. VOINOVICH. Mr. President, in this important debate on the Fiscal Year 2004 National Defense Authorization Act, I am deeply disappointed that the Parliamentarian has ruled irrelevant the amendment which Senator COLLINS and I planned to offer. Our amendment would establish the National Security Personnel System for the more than 700,000 civilian employees of the Department of Defense. The impact of the parliamentarian's ruling is that the Senate will be silent on one of the most substantial modifications to civil service law in the last 25 years. This is most unfortunate.

There is absolutely no doubt in my mind that this amendment should be considered by the Senate—if for no other reason than the House of Representatives has already acted on a similar measure. Both the House Government Reform Committee and the House Armed Services Committee approved a version of the National Security Personnel System, and it will be included in the Defense Authorization Act that the House sends to Conference.

I remind my colleagues that a new human resources management system for the Department of Defense will emerge from Conference. It will be one in which the Senate as a whole has had no voice, and the first time this chamber votes on it will be during the final passage of the Defense Authorization Act later this year. This is regrettable.

I have worked on Federal Government personnel issues generally, and Department of Defense personnel issues specifically, since I arrived in the Senate 4 years ago.

In March 2001, the Subcommittee on Oversight of Government Management held a hearing entitled, ''National Security Implications of the Human Capital Crisis.'' This hearing is just one of 13 that have been held by my Subcommittee on the Federal Government's human capital challenges.

Among our panel of distinguished witnesses that day was former Defense Secretary James Schlesinger, a member of the U.S. Commission on National Security in the 21st Century. Secretary Schlesinger discussed a comprehensive evaluation on national security strategy and structure that was undertaken by the Commission. Regarding human capital, the Commission's final report concluded:

> As it enters the 21st century, the United States finds itself on the brink of an unprecedented crisis of competence in government. The maintenance of American power in the world depends on the quality of U.S. government personnel, civil and military, at all levels. We must take immediate action in the personnel area to ensure that the United States can meet future challenges.

Secretary Schlesinger added further:

> . . . it is the Commission's view that fixing the personnel problem is a precondition for fixing virtually everything else that needs repair in the institutional edifice of U.S. national security policy.

Just last week, my Subcommittee held a field hearing in Ohio entitled, ''An Overlooked Asset: the Defense Civilian Workforce.'' During this hearing, I heard testimony on the National Security Personnel System from Dr. David Chu, the Under Secretary of Defense for Personnel and Readiness, and the head of the U.S. General Accounting Office, Comptroller General David Walker.

Dr. Chu testified that, ''the rigidities of the title 5 system of personnel management make it difficult for our civilians to support the military.'' He stated that the Defense Department's top three priorities were hiring flexibilities, reform of the compensation system, and bargaining at the national level with the Department's unions.

Mr. Walker stated that ''We strongly support the concept of modernizing Federal human capital policies within DOD and the Federal Government at large,'' and ''the Federal personnel system is clearly broken in critical respects.'' However, he also noted that the ''senior civilian and military leaders have devoted 'far less' attention to civilian personnel challenges than the challenges of maintaining an effective military,'' and that the Department needs to further develop and integrate its departmentwide human capital strategies.

But even before these hearings in which the national security establishment's personnel needs were outlined so clearly, I have been working to improve the management of the Defense civilian workforce. Many of the acute challenges confronting the Defense civilian workforce were brought to my attention several years ago through conversations with senior managers, both military and civilian, at Wright Patterson Air Force Base in Dayton, Ohio.

When the Senate was considering the 2001 National Defense Authorization Act in June 2000, Senator DEWINE and I offered an amendment that would provide the Defense Department the ability to reshape its workforce through the use of early retirement and voluntary separation incentives.

Securing passage of that relatively simple amendment was not easy. I worked closely with the distinguished Chairman of the Armed Services Committee, Senator JOHN WARNER, the distinguished Ranking Member of the Armed Services Committee, Senator CARL LEVIN, and my distinguished colleague on the Armed Services Committee, Senator JAMES INHOFE, to ensure the adoption of that modest reform.

I wish the Senate had built on this earlier reform and the broader reforms that were included in the Homeland Security Act last year.

I would like to outline briefly what should be included in the National Security Personnel System.

First, the system should feature the broad flexibilities that were provided to the Department of Homeland Security. I believe that the labor-management collaboration process that was mandated for that new Department, and which would be replicated for the Defense Department, is proving effective in ensuring employee participation in the establishment of a new human resources system.

The Defense Department should use its flexibility to design and implement a modern pay-banding and pay-for-performance system which emphasizes accountability, as opposed to the current system in which seniority and pay increases are based primarily on the passage of time.

In addition, the new National Security Personnel System must include substantial hiring flexibility, broad workforce reshaping authorities, and must grant the Department of Defense the ability to bargain with its unions at the national level.

The new system also should provide the Secretary of Defense additional flexibility in hiring personnel outside of the United States on short notice, as well as additional benefits for certain Defense personnel serving abroad.

I support retaining the Director of the Office of Personnel Management as a strategic partner with the Secretary of Defense in the establishment of this new personnel system, and I do not believe that the Secretary should have ''sole, unreviewable'' authority over this new system.

The provisions I just described will give the Defense Department the authority to create a modern personnel system to meet the challenges of the 21st century.

Despite the documented need for further significant reform of the civil service, and the Defense Department's concerted and diligent efforts in this area that culminated in the proposed National Security Personnel System, the Senate apparently will take no action. Mr. President, in this regard, the United States Senate has abrogated its responsibility to the civilian employees of the Department of Defense.

Mr. NELSON of Florida. Mr. President, I rise today to speak in favor of the National Defense Authorization Act for Fiscal Year 2004 and what this bill does for our national security.

I am honored to be the ranking member on the Subcommittee on Strategic Forces. I thank Senator ALLARD, the chairman of the subcommittee, for his leadership and generous spirit of cooperation.

This bill accomplishes much that is good for America, and I am proud to have been a part of shaping the direction of our current and future security.

The Strategic Forces Subcommittee has had a good year with a number of hearings on the difficult and complex issues that fall within the subcommittee's jurisdiction. With just a few exceptions, the provisions in the bill on the floor today are balanced and enjoy strong bipartisan support.

In the space program area, an area of great interest to both Senator ALLARD and myself, I note our strong support of the additional funds provided for the GPS–3 satellite.

The Nation cannot afford to delay the important technological advances that GPS–3 will provide.

The Defense Department wanted to delay this program, but this year's budget request was put together long before the war in Iraq.

Given the performance of and the demand for the precision provided by GPS in the war and U.S. reliance on GPS generally, the GPS–3 must be accelerated. Hopefully, this bill will get this vital program back on track.

The approach taken in the bill on missile defense is balanced. My colleagues on this side of the aisle and I appreciate that this bill addresses a number of our concerns and incorporates some of our recommendations to strengthen our missile defense programs.

I fully support the provision in the bill that will provide Congress important information on the funding required to actually procure, not just research, our missile defense systems.

This provision, when enacted, will provide Congress and the American people a window into the costs of our missile defense plans, and will also help ensure that we know up front how much funding is required to deploy future missile defense systems.

I also am pleased that the bill will restore a national missile defense intercept test in fiscal year 2004. The administration has decided to cancel 9 of 20 previously planned intercept tests for this system. One of the cancelled tests was to have occurred in 2004.

This is of concern to me—I believe we need to test systems before we deploy them. Restoration of the test in 2004 will substantially enhance our knowledge of the missile defense system the President has decided to field at the end of 2004. Adding this one test will increase the number of full-up tests of the system between now and the fielding date by 50 percent.

The bill also contains a requirement for the Department to report to Congress on why the national missile defense test plan has changed so radically. This is a positive step.

Unfortunately, the bill does not urge the administration to restore the other eight cancelled tests, or require the administration to notify Congress if it decides to cancel even more tests.

Congress has a modern tradition of using testing—developmental and operational—as a critical element of its constitutional oversight responsibility. We should not abandon this now.

The President plans to field a missile defense system in 2004, yet that system is still years from being fully tested and proven. When deployed in 2004 it is not clear how well the system would work if called upon. Only a disciplined, fully funded, and rigorous test program will determine that.

During the debate on this bill, I hope we can find a way to restore some of the testing unwisely removed from the program.

One of the areas the committee bill does not address is the lack of any yardstick with which to measure the developmental progress of our missile defense programs. Essential management tools, common to any technology program, are not in place for missile defense.

With the exception of the Patriot PAC–3 program, developed mostly under President Clinton, no other missile defense programs have any established standards by which to measure their progress in development. Are we ahead or behind schedule? Are we over, at, or under budget? Is the technology ready, or is there more to learn?

How can Congress effectively meet our constitutional duty in oversight of

this extremely complex and expensive national effort if we do not have an objective, scientifically based yardstick to measure our progress?

Americans know that before you buy a car, you would like to know its fuel economy, power, load capacities, and whether it has a good maintenance record. Buying a major weapon system is not different—no matter how complex. Before the Department of Defense or Congress buys a multibillion-dollar system, we, and the American people, should want to know how well it should and does perform. For a missile defense program, this means how reliably interceptors will launch, how many missiles it should be able to shoot down, how many decoys it can deal with, and so on.

The administration has no such standards for missile defense. At this moment, neither Congress nor the American people know what we are getting for our money in missile defense. Even for the ''limited'' system the administration plans to field in 2004, there is no description of and commitment to the types of missiles it must or will defend against, or how many decoys it can handle. I hope we can find some way to develop some performance standards for our missile defense program.

In the area of signals intelligence, I fully support the funding increases for signals intelligence aircraft. These assets have played a disproportionately large role in the war on terrorism and continue to be heavily utilized. It is essential that we provide the critical funding to sustain and improve these important aircraft.

Unmanned aerial vehicles have played a remarkable role in the wars in Afghanistan and Iraq, as well as in the greater war on terrorism. This is one reason that a number of Senators from both sides of the aisle were disappointed with the Navy's decision not to buy the new Fire Scout unmanned helicopters. The Fire Scout has performed well during its development and holds significant promise for the future. I fully support the additional $40 million provided for Fire Scout that should allow production to start in 2004.

I also note my support on the provision that will focus the attention of the National Nuclear Security Administration's efforts to address the maintenance backlog at its facilities. The Department of Energy, DOE, has been trapped in a death spiral of deferring maintenance for 20 years. We all hope that a provision in this bill brings a new dedication to facilities management that ends the spiral.

Finally, one additional area in the bill that troubles me, and many of our colleagues, is its approach to nuclear weapons.

It appears that the Bush administration is making a significant change in U.S. nuclear weapons policy by blurring the distinction between nuclear and nonnuclear weapons.

This blurring appears to be leading to a new and unsettling notion of usable nuclear weapons, a possible resumption of nuclear weapons testing, and an overall approach that would lend renewed credibility and legitimacy to nuclear weapons at levels well below their traditional strategic deterrence role. This bill supports those goals.

It is important that the United States maintain a strong nuclear deterrent. But it is equally important for the United States to maintain the longstanding policy that nuclear weapons are a weapon of last resort—not just another weapon.

Today the United States sits firmly atop the moral high ground when it comes to the development and proliferation of nuclear weapons. Our leadership and commitment to nonproliferation is undisputed.

Just over the last few years, the United States has successfully assisted the third and fourth largest nuclear weapons states, Ukraine and Kazakhstan, to be signatories of the NPT as nonnuclear weapons states.

The United States is working hard to reduce tensions and nuclear risks between Pakistan and India. At the same time, we are locked in a tough strategic challenge over nuclear weapons in North Korea.

With strong leadership we can continue making progress against the proliferation of weapons of mass destruction, particularly nuclear weapons. But we must continue to lead by example.

But we will fail if our leadership suggests to the world that we have accepted the legitimacy of nuclear weapons as a realistic tactical option.

I acknowledge that we have legitimate scientific interests in the reliability and effectiveness of our nuclear arsenal and new technologies that may improve safety or reduce costs. Members tend to agree on these research interests. But Members, and the American people, tend to divide over committing the Nation to programs that will develop and deploy new weapons for purposes other than nuclear deterrence.

We are entering dangerous territory here and must move forward carefully, mindful of our global leadership, without illusions of those threats that are most likely and most dangerous, and without ideological blinders.

I will join with several of my colleagues later in a series of amendments that will, if adopted, address some of these concerns. The debate that lies ahead will be important to this bill and our national security.

Mr. President, my thanks again to Senator ALLARD for his leadership of our subcommittee this year, and to Senators WARNER and LEVIN for their leadership of the full committee. I look forward to the work we will do together as we move this important bill to final passage.

NOTICE

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ORDERS FOR THURSDAY, MAY 22, 2003

Mr. BROWNBACK. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Thursday, May 22. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of S. 1050, the Department of Defense authorization bill, provided further that the Murray amendment No. 691 be temporarily set aside, and, further, when the Murray amendment recurs, Senator BROWNBACK be recognized; provided further that when the Senate resumes consideration of the bill on Thursday, Senator DASCHLE or his designee be recognized to call up amendment No. 791.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Mr. President, reserving the right to object, what this unanimous consent agreement says is, in the morning we will come in, do the prayer and the pledge, then we will move to the Daschle amendment. When that is disposed of, Senator BROWNBACK will be recognized to offer a second-degree amendment to the Murray amendment. This is a right the majority would have.

What we are doing here is making sure that Senator FRIST, who may not be available at that time in the morning, will have his rights protected.

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

Mr. BROWNBACK. Mr. President, I thank the Senator from Nevada for working with us. We have had a knotty problem here, but I think we are getting on through it, and I appreciate their cooperation in working with us.